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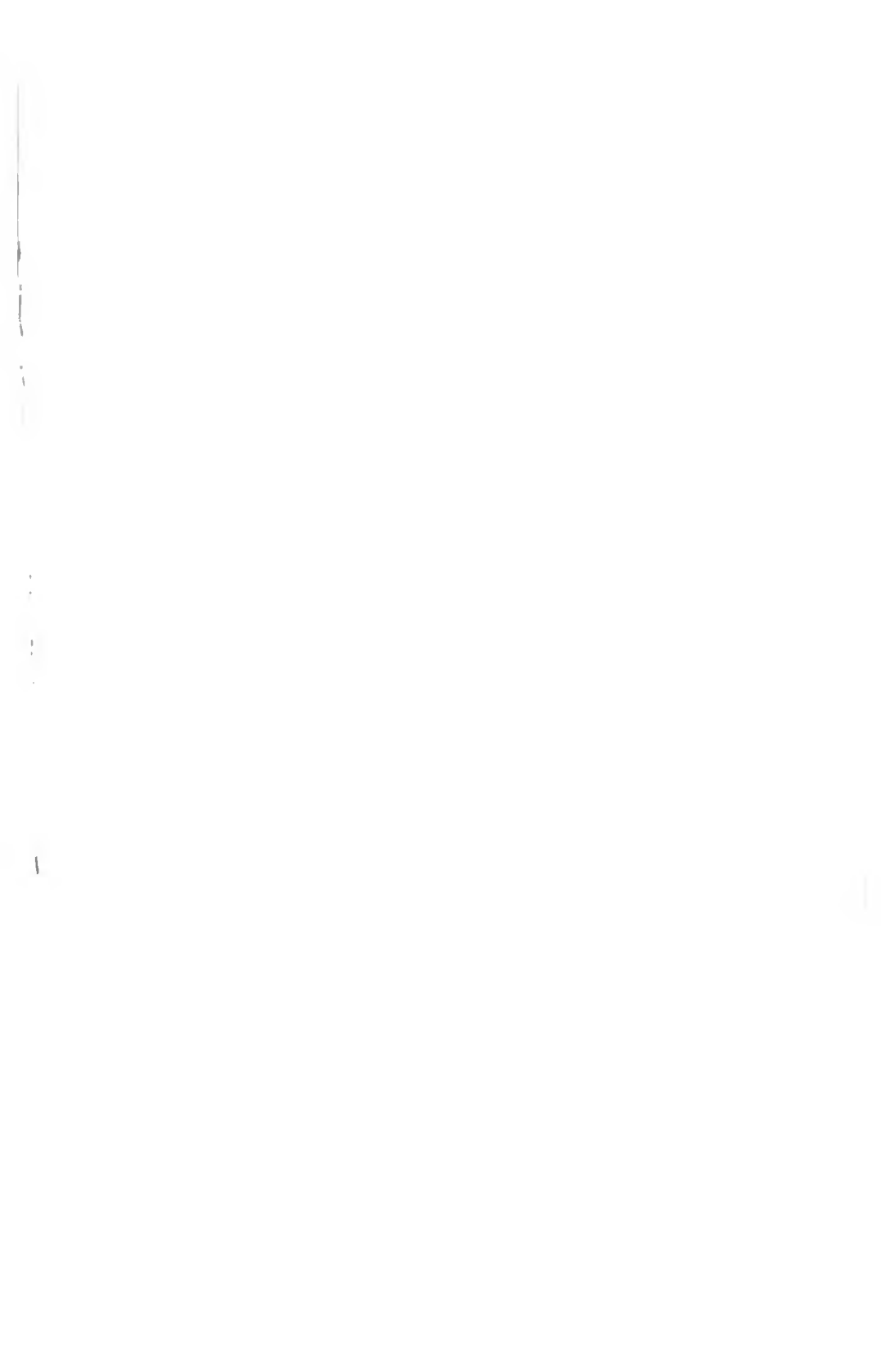


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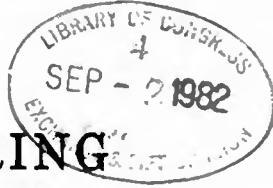
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**DEPARTMENT OF JUSTICE AUTHORIZATION FOR
FISCAL YEAR 1983**

*United States. Congress. House. Committee on the
Judiciary.*



**HEARING
BEFORE THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES**

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

**DEPARTMENT OF JUSTICE AUTHORIZATION FOR
FISCAL YEAR 1983**

FEBRUARY 23, 1982

Serial No. 39



Printed for the use of the Committee on the Judiciary

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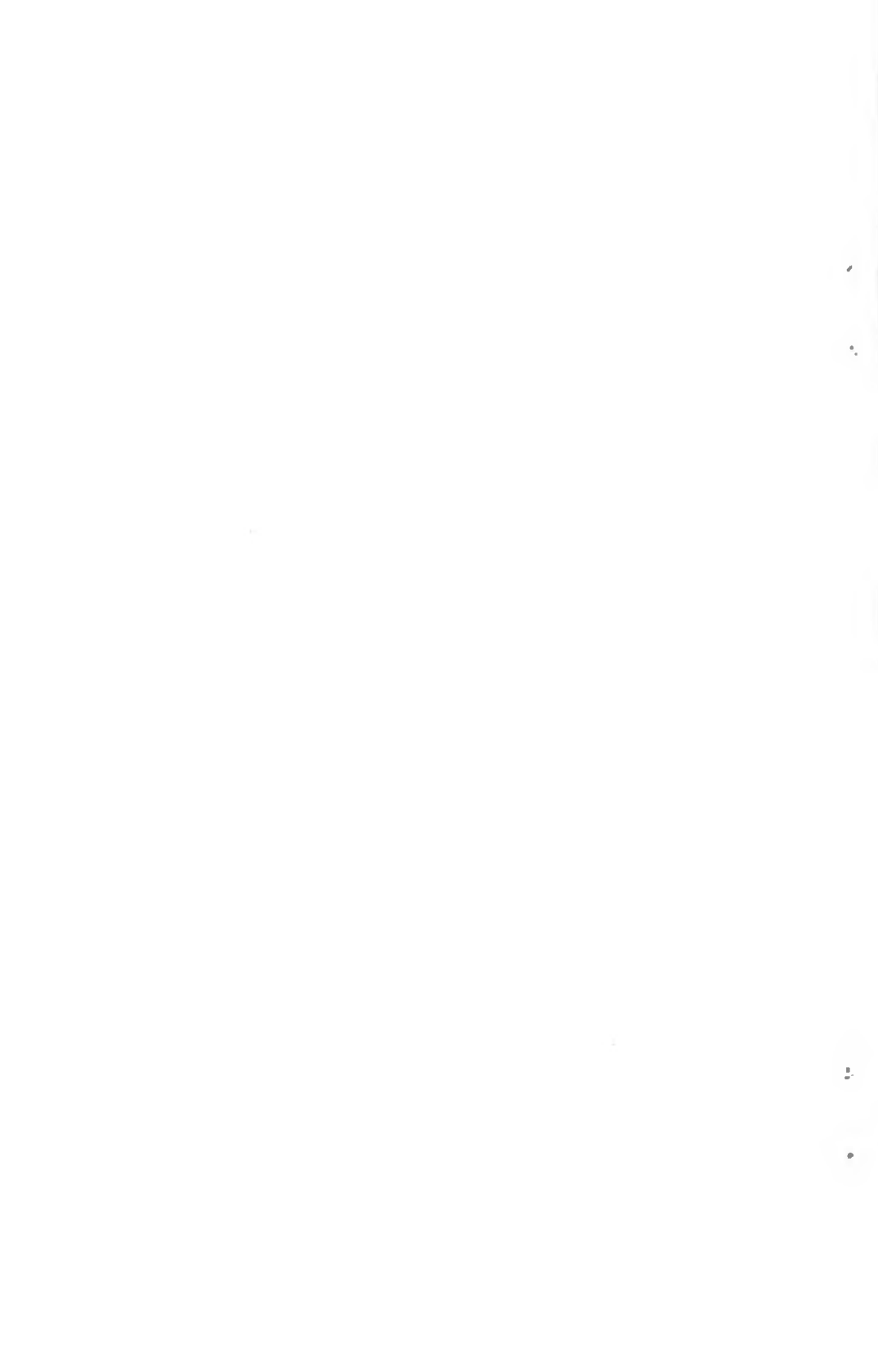
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CONTENTS	
WITNESSES	
	Page
Rooney, Kevin D., Assistant Attorney General	43
Smith, Hon. William French, Attorney General of the United States.....	18
Prepared statement	4
APPENDIX	
McConnell, Robert A., Assistant Attorney General, letter dated February 26, 1982, to Hon. Peter W. Rodino, Jr	53
Reynolds, William Bradford, Assistant Attorney General, remarks before the Delaware Bar Association	83
Rodino, Hon. Peter W., Jr., chairman, House Committee on the Judiciary, letter with attachments dated March 9, 1982, to Hon. William French Smith	59



DEPARTMENT OF JUSTICE AUTHORIZATION, FISCAL YEAR 1983

TUESDAY, FEBRUARY 23, 1982

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 2141, Rayburn House Office Building, Hon. Peter W. Rodino (chairman) presiding.

Present: Representatives Rodino, Kastenmeier, Edwards of California, Danielson, Mazzoli, Hughes, Hall, Schroeder, Frank, Fish, Butler, Moorhead, Hyde, Kindness, Sawyer, Lungren, Sensenbrenner, and McCollum.

Also present: Alan A. Parker, general counsel; Garner J. Cline, staff director; and Franklin G. Polk, associate counsel.

The CHAIRMAN. The committee will come to order.

The gentleman from California.

Mr. EDWARDS. Mr. Chairman, I ask unanimous consent that the committee permit this meeting this morning to be covered wholly or in part by television or radio broadcast.

The CHAIRMAN. Without objection, it is so ordered.

This hearing this morning is being conducted by the House Committee on the Judiciary for the purpose of considering the authorization of the Department of Justice appropriation for fiscal year 1983.

Mr. Attorney General, we appreciate your taking the time out of your busy schedule to discuss this very important issue with us. I regret very much that we delayed you but, unfortunately, this seems to be the disposition of the Congress. While other Members have other important duties, nonetheless we feel this is important and we appreciate your coming here.

We welcome this opportunity, too, Mr. Attorney General, because during this time of constraint in our budget, as we exercise our responsibility for important oversight functions, we nonetheless must proceed carefully. The budget proposal you present for fiscal year 1983 requests \$2.66 billion to operate the Department of Justice, which represents a 7.7-percent funding increase on the whole; however, this proposal reflects a decrease of 283 positions.

As I stated, in this time of belt tightening we appreciate the need to cooperate with the administration in making appropriate reductions; however, I believe it is important for us to understand the justification for these cuts. We want to explore these proposals with you and, in subsequent sessions with other Department offi-

cials, to make certain the Department has adequate resources to carry out its traditional responsibilities, along with the additional burdens that recently have been imposed on it.

These new responsibilities result from the transfer of certain functions within the executive branch.

Specifically, I note that the responsibility for Cuban-Haitian refugee resettlement has been transferred to the Justice Department from Health and Human Services, that certain civil rights enforcement activities have been transferred from the Department of Education, and that certain petroleum regulation activities have been transferred from the Department of Energy.

It is my understanding that the latter two transfers will require separate legislation and that you will address this.

I want to express a personal concern, which we have discussed before. I believe it is important that we call to your attention the fact that we have some disagreement about your plan to abolish the U.S. trustees pilot program. Frankly, I, together with the members of the Subcommittee on Monopolies and Commercial Law, question whether there has been enough time to determine whether the program has achieved its goal of building public and legal confidence in the administration of bankruptcy cases. After having had many discussions, I think you are somewhat premature to abolish this pilot program.

In view of the fact that abolition of the program would require separate legislation, I wonder whether or not you intend to introduce that legislation. I would like to continue our discussions on this topic because I believe it is an area that is becoming more complex. It is an area that requires more attention and, in this time of economic distress for businesses, frankly I think that your proposal is premature at best and not in keeping with what this committee and the Congress adopted sometime ago. It was an express policy decision of Congress to create the trustees program.

The budget also reflects decreases within the DEA. I am sure members of the committee are concerned about the effectiveness of the Government's drug enforcement activities and how those activities will be affected by the recently announced consolidation of FBI and DEA activities.

There are other matters. I am not going to dwell on them. I know that your testimony will cover these subjects. I would hope, however, that during the course of the discussion with the various subcommittee members that we may be able to elucidate on these other matters.

Before asking you to present your statement, I am going to ask the gentleman from New York, who is now the ranking minority member, if he will make some comments.

Mr. FISH. Thank you very much, Mr. Chairman.

I am likewise pleased to welcome the Attorney General here this morning. While I may have questions myself on some aspects of the administration's request for an authorization for fiscal year 1983, I commend the Attorney General for generally having protected his Department from the acts of one of our former colleagues, Dave Stockman. Law enforcement is a primary function of government. We cannot afford to skimp in so vital an area.

As we begin these hearings on the Justice Department authorization, I must confess that I harbor some doubts whether we will have any authorization enacted in this Congress or even the next. As long as the other body, with its liberal rules of germaneness, injects social issues into the process which are repugnant to a majority on this committee, I foresee no easy solutions.

The continual use of extensions of short duration which we seldom enact in time to prevent a lapse in your authorization serves to cast doubt on the legality of the FBI's undercover activities. Since the Department is frustrated by congressional inaction, I would suggest to the Attorney General that perhaps with his personal leadership in the days ahead, we might still work out last year's authorization difficulties and start with some cause for optimism on the proposal before us.

Thank you, Mr. Chairman.

Mr. HYDE. I would suggest to the gentleman that if we can get a Federal judge to find the Senate's rule of germaneness or nongermaneness unconstitutional, there will be no problem, I am sure.

The CHAIRMAN. Mr. Attorney General, you may proceed.

[The prepared statement of Attorney General Smith follows:]



Department of Justice

STATEMENT

OF

WILLIAM FRENCH SMITH
ATTORNEY GENERAL

BEFORE

THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

CONCERNING

DOJ AUTHORIZATION

ON

FEBRUARY 23, 1982

Mr. Chairman and Members of the Committee:

I am pleased to be with you today to discuss the 1983 budget request for the Department of Justice. My total 1983 request is for \$2.67 billion and 54,104 positions. This level of resources would allow me to maintain the Department's Federal law enforcement operations at the current level of effort. In view of the necessary, yet significant Federal budget reductions proposed for domestic programs, the Justice request reflects the President's strong commitment to an effective law enforcement program.

Our request includes uncontrollable cost increases of \$196.1 million, program increases of \$67.8 million, the proposed transfers from other Departments of \$22.2 million, and program reductions of \$94.2 million. The major part of our program increase is for \$58.7 million to fund the transfer of responsibility to the Attorney General for Cuban/Haitian entrants under the Refugee Education Assistance Act of 1980. Nearly all of our program reductions are related to the elimination of four programs which we had requested the Congress to eliminate last year. These consist of State and local grant programs and the United States Trustee's activity.

Our request represents a continuation of this Administration's commitments and priorities which I enunciated before this committee a year ago. At that time I spoke of the need for all Federal agencies to share in overall spending and personnel reductions. I emphasized our commitment to priority

crime control areas and the need to reduce Federal subsidies to State and local agencies.

We have contributed our share to necessary overall reductions in Federal spending and in the size of the Federal workforce. While accomplishing this, we have been able to fully maintain essential operations and have increased Federal law enforcement efforts in high priority areas. We are also returning control of State and local criminal justice programs to those officials who are closest to the needs of local crime problems.

As I have indicated on several occasions before this and other committees, violent crime is one of the most urgent problems facing the nation. I am convinced that narcotics trafficking is a major contributing cause of violent crime. Economic conditions continue to require us to consider solutions which do not rely on merely spreading Federal funds to solve the crime problem. In the long run we are likely to be more effective by seeking improvements in how we combat crime than simply by increasing Federal expenditures of money and manpower. With this in mind, we have begun to restructure the Drug Enforcement Administration and, for the first time in the history of the FBI, its agents have also been given a major drug enforcement role. The Director of the FBI has been designated to assist me in overseeing these joint enforcement efforts. Through Department initiatives, the Navy and Air Force are now furnishing information to civilian law enforcement agencies on sightings of suspected drug traffickers heading for the United States and, within the constraints imposed by law, they are providing intelligence on possible narcotics operations.

To minimize duplication of effort and waste of resources among Federal, State and local law enforcement agencies, I have directed each of our United States Attorneys to establish a Law Enforcement Coordinating Committee that will closely cooperate with State and local enforcement officials and will draft detailed plans for a more effective use of Federal resources against the worst local crime problems.

Last year I announced the appointment of my Task Force on Violent Crime. Over the past several months, you have become well aware of their recommendations. Some of those recommendations, such as reforms in bail laws and other parts of the criminal code, will require Congressional action, and legislative proposals are under discussion. Another recommendation addressed the serious shortage of prison space at the State and local level. In response to this problem, we have developed a program to facilitate the turnover of surplus Federal property to States for use as prisons and jails and, again this year, I am seeking authority to assist in improvements to local jail facilities through a Cooperative Agreement Program.

In other areas, the Task Force recommendations and our internal management reviews have assisted us in directing the resources of the Department and other Federal, State and local law enforcement agencies toward a more effective fight against crime. Although the problems this society faces with respect to crime and its effects are enormous, the resources already available to the Federal government are significant, and the focus of our effort should be to achieve a level of efficiency and effectiveness that has often been lacking.

LAW ENFORCEMENT

The additional resources made available to the Federal Bureau of Investigation in 1982 will allow us to maintain a strong commitment to our enforcement priorities in 1983 at the current level of operations. Although our 1983 requested level shows a decrease in authorized positions, these positions have never been fully funded or filled. In fact, my request for the FBI is higher than the current on-board strength and will allow for an increase in actual employment.

As I stressed to you, Mr. Chairman, in a letter earlier this month, we also intend to continue our efforts to provide applicant fingerprint processing services on a reimbursable basis. We do not intend to charge State and local law enforcement agencies for these services, but need your support in our efforts to place the cost of non-law enforcement requests upon the direct beneficiaries of such services, such as private institutions and state licensing boards.

With concurrent jurisdiction over the investigation of Federal drug offenses assigned to the FBI, I am fully confident that an infusion of FBI resources and expertise, to supplement those of DEA, will aid our national drug enforcement effort. For the Drug Enforcement Administration itself, we are requesting a relatively minor program decrease from current services to be allocated proportionally among DEA's programs. These decreases will be achieved through improved operational efficiency and reductions in redundant administrative activities. There will, however, be no reduction in authorized positions for DEA.

I am also creating a high-level Justice Department committee to oversee the development of drug enforcement policy and to assure that all the Department's resources, including its prosecutorial and correctional efforts, are effectively engaged in the effort against drug trafficking.

DEA has made significant progress in controlling the availability of Southwest Asian heroin. Much of the Southwest Asian heroin destined for the United States in 1980 and 1981 never reached this country. While supplies of opium in Southwest Asia continue to be abundant, enforcement pressure will be maintained on Southwest Asian heroin availability by the appropriate domestic and foreign field offices. Furthermore, asset seizures of major narcotics traffickers have increased substantially. In the past two years alone, DEA seized approximately \$255 million of drug-related assets. Seizures this year are expected to exceed the total dollar amount of the DEA budget. Continued efforts in the "asset seizures" area will, no doubt, have a considerable effect on major drug trafficking.

For the United States Marshals Service, the budget request reflects the joint efforts of the Department and the Courts to develop sound, coordinated responses to our mutual problems. Since my initial meetings with the Chief Justice last spring, we have joined in efforts to resolve the management and resource problems affecting both the service of private process and the provision of court security. This year's budget is based on our continued desire to establish fees to directly fund actual costs for the services of private process. Statutory authority to fund our activities in this manner would result in increased participation by private businesses in providing process service and eventually reduce the burden on taxpayers.

to subsidize this activity. This is one example of the Administration's efforts to encourage private alternatives to Federal government action through the imposition of user fees. Since valuable Federal law enforcement dollars are now required to subsidize this activity, I have emphasized my interest in your support, Mr. Chairman, in my recent correspondence to you on user fees. With the cooperation and assistance of the Administrative Office of the U.S. Courts we have completed an initial plan which addresses the assignment of Deputy U.S. Marshals in courtrooms for security purposes on the basis of anticipated risk levels. This plan provides standard risk indicators which will be used in each judicial district to determine the requirement for a Deputy in the courtroom. The determination will be made jointly by the U.S. Marshal, the U.S. Attorney and the local Federal judiciary. The Chief Justice and I will have further discussions on this matter next month.

The area of immigration is one that has received a lot of attention over the past year. I served as chairman of the Task Force on Immigration and Refugee Policy that reviewed the earlier Select Commission's report. Based on our recommendations, the President requested an amendment to our 1982 budget to provide the Immigration and Naturalization Service with increased resources for its enforcement programs. A large part of this request has been provided in the current Continuing Resolution; I continue to urge the Congress to include the remaining part of this package--specifically the funding for a permanent detention facility--in your next action on our 1982 funding levels.

We have also submitted an immigration legislative program. This program included establishing employer sanctions with strict penalties for employers

who knowingly hire aliens; establishing a temporary worker program to allow aliens to work in certain types of employment in geographic areas where there is a lack of available citizen labor; permitting undocumented aliens residing in the United States to receive permanent status after ten years; providing visa waivers for tourists and business travelers who wish to visit the United States for short periods of time; and providing the President with a wide range of authority in the event of an immigration emergency. These and other legislative initiatives have been transmitted to the Senate as part of the Omnibus Immigration Control Act.

The INS has not had a permanent Commissioner in several years. There is no question this has detracted from its stability, as well as its ability to formulate and implement cohesive immigration initiatives on behalf of the Attorney General. Mr. Alan C. Nelson has now taken the oath of office as the first INS Commissioner in 2 1/2 years. We are hopeful that we can now get on with the business of implementing a strong, responsive program at INS.

In addition to continuing the current operations of INS, my 1983 request includes a new program activity which is being transferred from the Department of Health and Human Services. This new activity provides for the processing, care, maintenance, security, transportation and initial reception and placement in the United States of Cuban and Haitian entrants. By recent Executive Order, this activity was transferred from the Cuban/Haitian Task Force within the Department of Health and Human Services to the Department of Justice.

LITIGATION

Our litigating organizations are the vital link in carrying out this Administration's law enforcement responsibilities and in defending Federal programs in court. I am quite sensitive to the primacy and central role of the Department of Justice in Federal litigation. As I have previously testified, I am firmly committed to the principle that the Attorney General is responsible for the coordination and management of the Federal government's litigation.

My request for both the General Legal Activities appropriation and for the United States Attorneys would continue the anticipated 1982 levels, with a modest funding increase for payments to private counsel. I am confident that these levels will permit us to keep pace with our increasing litigative and prosecutorial activities. While funding for the legal divisions and the U.S. Attorneys will support at least the same level of effort as in this year, we will see some shifts in emphasis.

The U.S. Attorneys and the Criminal Division will have a lead role in our program against violent crime, particularly through the development of Federal-State-local Law Enforcement Coordinating Committees to handle concurrent jurisdiction matters; this should result in a more effective use of our Federal prosecutorial resources. In this regard, I am pleased to note that the vast majority of U.S. Attorneys appointed by this Administration have had prior law enforcement experience.

A major priority in the criminal litigation programs of the Criminal and Tax Divisions will be the prosecution of major narcotics traffickers, with

emphasis on financial investigations and the forfeiture of assets and profits. Organized crime and economic crime prosecutions, of course, continue to be high priorities. Fraud cases are being given increased emphasis in both the Criminal and the Civil Divisions, and we are actively improving our communication and coordination with the Inspectors General of the various departments and agencies.

In prior years, all too little emphasis has been directed in Congressional testimony to the importance of our civil litigation program. Our current defense of Federal programs represents nearly \$100 billion of exposures. I cannot overstate the pivotal role this activity can, and indeed does have in protecting the financial status of the Federal government. I consider the funding of our civil litigation activities one of the most cost-effective Federal budget decisions.

A major initiative of this Administration, and a priority of mine in the Department of Justice, is the improved management of collections--collecting debts owed to the United States as a result of defaulted loans or court judgments. While this activity pertains to all of our litigating organizations, I have assigned the Assistant Attorney General for the Civil Division a lead role for all Department of Justice collections.

Another cost-effective measure which we intend to maintain with our current resources is further application of automation and word-processing systems to litigation management and support. The U.S. Attorneys will continue installation of their automated case-management system in several offices. The legal divisions, if our full 1983 request is approved, will

be able to procure equipment for which they had to defer purchase in 1982 because of the outcome of final Congressional action on the Continuing Resolution. I have also established within current resources, a separate Litigation Systems Staff in the Justice Management Division to provide direct support to our litigative activities.

For the Antitrust Division, we are requesting a five-percent position decrease. While this request reflects the Administration's objective to reduce Federal employment, it also is an expression of our confidence that we can continue an effective antitrust enforcement program at the requested level. In support of the President's economic program, the Antitrust Division will undertake the vital task of reforming antitrust policy to improve the productivity of the economy and protect the interests of consumers. We will seek to enhance consumer welfare by challenging private parties and government regulations that impair economic efficiency.

The Fees and Expenses of Witnesses appropriation, which is used by all six legal divisions and the U.S. Attorneys, requires a relatively large program increase of nearly \$6 million. The increasing use of expert witnesses in complex litigation, rising costs associated with protecting witnesses in sensitive cases, and higher travel, lodging and subsistence costs in general, compel us to include this essential activity as one of our program increases for 1983.

We are again calling for termination of the U.S. Trustees program. The Department requested that this program be phased out in 1982, but Congressional actions to date have restored it at a level of \$5 million. In my

meeting with the Chief Justice last spring I discussed with him the effects of terminating the program. We have agreed that responsibility for the pending caseload would be returned to the Judiciary under the overall supervision of the Administrative Office of the United States Courts, at a considerable savings in operating costs. The Department is committed to working closely with the bankruptcy courts and the Administrative Office of the United States Courts to ensure that there will be a smooth, efficient transfer of functions.

CORRECTIONS

The Federal prison population has increased by 17% over the past year. The increase is attributed to several factors, including requirements to house Cuban and Haitian detainees, the decline in the release rate and increased parole revocations. We anticipate that the Federal prisoner population will continue to grow in the future because of our aggressive investigative and prosecutorial policies. To accommodate the increase, the plan to close the Atlanta penitentiary has been deferred indefinitely, and we are seeking Congressional concurrence to allow the facility to remain operational.

To maintain the appropriate level of medical care in our prisons, an increase in positions is requested to allow us to begin the hiring of civil service physicians and dentists. This is required because of the phasing-out of the Public Health Service Hospital System.

For the Buildings and Facilities program in the Bureau of Prisons, the level requested will fund minor repair projects and payments under the lease/purchase agreement for the Oxford, Wisconsin facility. Decreases reflect the

non-recurring costs associated with rehabilitation and renovation projects and planning and site acquisition.

For the National Institute of Corrections program, the request will allow for the delivery of training and technical assistance services to State and local correctional agencies at effectively the same level as 1982.

STATE AND LOCAL ASSISTANCE

The Office of Justice Assistance, Research, and Statistics includes the Law Enforcement Assistance and the Research and Statistics appropriations. In keeping with the Department's commitment to provide necessary support to State and local criminal justice systems in the areas of research, evaluation, and statistical collection and analysis, the Department is requesting current levels of funding for the Research and Statistics appropriation. This appropriation includes the National Institute of Justice and the Bureau of Justice Statistics. In these areas, we believe that Federal funding can be utilized effectively on a selected basis to promote long-term improvements in the operation of the criminal justice system.

With respect to the Law Enforcement Assistance appropriation, I am once again proposing that funding for Juvenile Justice programs be eliminated. This proposal does not reflect a determination that these programs are unwarranted. Rather, it reflects a belief that the major statutory requirements underlying these programs have been substantially satisfied and that further efforts with respect to individual projects are best controlled and funded at the State and local level. Under this approach, individual projects can

be framed to respond to local variations in the nature of juvenile criminality and its relationships to adult criminality. This approach also recognizes that crime prevention and control are fundamental responsibilities of State and local governments.

OTHER DEPARTMENTAL REQUIREMENTS

The Department's request for General Administration includes the elimination of the State and Local Drug Grant program and a minor increase in funding for the Federal Justice Research program. The drug grant program provides funds to establish operational information exchange facilities which primarily involve and serve State and local law enforcement organizations. As I have said, activities of this nature are properly the responsibility of State and local governments and are best controlled and funded at that level. The increased funding for research is needed to continue efforts in the priority areas of immigration policy, drug enforcement, and violent crime.

The Department of Justice budget request also reflects the proposed transfer of \$20.2 million and 333 positions from the Department of Energy, and \$1,299,000 and 32 positions from the Department of Education. These transfers are part of the President's proposal to abolish these Departments. While I am not in a position to discuss these proposals in detail, these transfers would include our assuming responsibility for energy litigation under the Emergency Petroleum Allocation Act, and for civil rights enforcement and litigation activities from the Office of Civil Rights in the Department of Education.

In conclusion, I am requesting the authorization and appropriation of a 1983 Department of Justice budget which supports the Federal law enforcement levels that the Congress has thus far made available for 1982. I urge you to join with us again in this commitment to law enforcement. I also ask that you support us in the elimination of those programs for which the limited Federal dollar is no longer available.

Thank you, Mr. Chairman, I will be pleased to answer any questions you or the members of the Committee may have.

TESTIMONY OF HON. WILLIAM FRENCH SMITH, ATTORNEY GENERAL OF THE UNITED STATES

Attorney General SMITH. Thank you, Mr. Chairman and members of the committee. I am happy to be here today to address the 1983 budget request of the Department of Justice.

My total 1983 request is for \$2.67 billion and 54,104 positions. This level of resources would allow me to maintain the Department's Federal law enforcement operations at the current level of effort. In view of the necessary yet significant Federal budget reductions proposed for domestic programs, the Justice request reflects the President's strong commitment to an effective law enforcement program.

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This is one example of the administration's efforts to encourage private alternatives to Federal Government action through the imposition of user fees. Since valuable Federal law enforcement dollars are now required to subsidize this activity, I have emphasized

my interest in your support, Mr. Chairman, in my recent correspondence to you on user fees.

With the cooperation and assistance of the Administrative Office of the U.S. Courts, we have completed an initial plan which addresses the assignment of Deputy U.S. Marshals in courtrooms for security purposes on the basis of anticipated risk levels. This plan provides standard risk indicators which will be used in each judicial district to determine the requirement for a deputy in the courtroom. The determination will be made jointly by the U.S. Marshal, the U.S. Attorney and the local Federal judiciary. The Chief Justice and I will have further discussions on this matter next month.

The area of immigration is one that has received a lot of attention over the past year. I served as chairman of the Task Force on Immigration and Refugee Policy that reviewed the earlier Select Commission's report. Based on our recommendations, the President requested an amendment to our 1982 budget to provide the Immigration and Naturalization Service with increased resources for its enforcement programs.

A large part of this request has been provided in the current Continuing Resolution; I continue to urge the Congress to include the remaining part of this package—specifically the funding for a permanent detention facility—in your next action on our 1982 funding levels.

We have also submitted an immigration legislative program. This program included establishing employer sanctions with strict penalties for employers who knowingly hire undocumented aliens; establishing a temporary worker program to allow aliens to work in certain types of employment in geographic areas where there is a lack of available citizen labor; permitting undocumented aliens residing in the United States to receive permanent status after 10 years; providing visa waivers for tourists and business travelers who wish to visit the United States for short periods of time; and providing the President with a wide range of authority in the event of an immigration emergency. These and other legislative initiatives have been transmitted to the Senate as part of the Omnibus Immigration Control Act.

The INS has not had a permanent Commissioner in several years. There is no question this has detracted from its stability as well as its ability to formulate and implement cohesive immigration initiatives on behalf of the Attorney General. Mr. Alan C. Nelson has now taken the oath of office as the first INS Commissioner in 2½ years. We are hopeful that we can now get on with the business of implementing a strong, responsive program at INS.

In addition to continuing the current operations of INS, my 1983 request includes a new program activity which is being transferred from the Department of Health and Human Services. This new activity provides for the processing, care, maintenance, security, transportation and initial reception and placement in the United States of Cuban and Haitian entrants.

By recent executive order, this activity was transferred from the Cuban/Haitian Task Force within the Department of Health and Human Services to the Department of Justice.

LITIGATION

Our litigating organizations are the vital link in carrying out this Administration's law enforcement responsibilities and in defending Federal programs in court. I am quite sensitive to the primacy and central role of the Department of Justice in Federal litigation.

As I have previously testified, I am firmly committed to the principle that the Attorney General is responsible for the coordination and management of the Federal Government's litigation.

My request for both the General Legal Activities appropriation and for the United States Attorneys would continue the anticipated 1982 levels, with a modest funding increase for payments to private counsel. I am confident that these levels will permit us to keep pace with our increasing litigative and prosecutorial activities. While funding for the legal divisions and the U.S. Attorneys will support at least the same level of effort as in this year, we will see some shifts in emphasis.

The U.S. Attorneys and the criminal division will have a lead role in our program against violent crime, particularly through the development of Federal-State-local Law Enforcement Coordinating Committees to handle concurrent jurisdiction matters. This should result in a more effective use of our Federal prosecutorial resources. In this regard, I am pleased to note that the vast majority of U.S. Attorneys appointed by this administration have had prior law enforcement experience.

A major priority in the criminal litigation programs of the Criminal and Tax Divisions will be the prosecution of major narcotics traffickers, with emphasis on financial investigations and the forfeiture of assets and profits. Organized crime and economic crime prosecutions, of course, continue to be high priorities. Fraud cases are being given increased emphasis in both the Criminal and the Civil Divisions and we are actively improving our communication and coordination with the Inspectors General of the various departments and agencies.

In prior years, all too little emphasis has been directed in Congressional testimony to the importance of our civil litigation program. Our current defense of Federal programs represents nearly \$100 billion of exposure. I cannot overstate the pivotal role this activity can, and indeed does, have in protecting the financial status of the Federal Government. I consider the funding of our civil litigation activities one of the most cost effective Federal budget decisions.

A major initiative of this administration and a priority of mine in the Department of Justice is the improved management of collections—collecting debts owed to the United States as a result of defaulted loans or court judgments. While this activity pertains to all of our litigating organizations, I have assigned the Assistant Attorney General for the Civil Division a lead role for all Department of Justice collections.

Another cost effective measure which we intend to maintain with our current resources is further application of automation and word-processing systems to litigation management and support. The U.S. Attorneys will continue installation of their automated case-management system in several offices. The legal divisions, if

our full 1983 request is approved, will be able to procure equipment for which they had to defer purchase in 1982 because of the outcome of final Congressional action on the Continuing Resolution.

I have also established within the current resources a separate litigation systems staff in the Justice Management Division to provide direct support to our litigation activities.

For the Antitrust Division we are requesting a 5 percent position decrease. While this request reflects the administration's objective to reduce Federal employment, it also is an expression of our confidence that we can continue an effective antitrust enforcement program at the requested level.

In support of the President's economic program, the Antitrust Division will undertake the vital task of reforming antitrust policy to improve the productivity of the economy and protect the interests of consumers. We will seek to enhance consumer welfare by challenging private parties and government regulations that impair economic efficiency.

The "Fees and expenses of witnesses" appropriation, which is used by all six legal divisions and the U.S. attorneys, requires a relatively large program increase of nearly \$6 million. The increasing use of expert witnesses in complex litigation, rising costs associated with protecting witnesses in sensitive cases, and high travel, lodging, and subsistence costs in general, compel us to include this essential activity as one of our program increases for 1983.

We are again calling for termination of the U.S. trustees program. The Department requested that this program be phased out in 1982, but congressional actions to date have restored it at a level of \$5 million.

In my meeting with the Chief Justice last spring, I discussed with him the effects of terminating the program. We have agreed that responsibility for the pending caseload would be returned to the judiciary under the overall supervision of the Administrative Office of the United States Courts, at a considerable savings in operating costs.

The Department is committed to working closely with the bankruptcy courts and the Administrative Office of the United States Courts to insure that there will be a smooth, efficient transfer of functions.

CORRECTIONS

The Federal prison population has increased by 17 percent over the past year. The increase is attributed to several factors, including requirements to house Cuban and Haitian detainees, the decline in the release rate, and increased parole revocations.

We anticipate that the Federal prisoner population will continue to grow in the future because of our aggressive investigative and prosecutorial policies. To accommodate the increase, the plan to close the Atlanta penitentiary has been deferred indefinitely, and we are seeking congressional concurrence to allow the facility to remain operational.

To maintain the appropriate level of medical care in our prisons, an increase in positions is requested to allow us to begin the hiring

of civil-service physicians and dentists. This is required because of the phasing out of the Public Health Service hospital system.

For the Buildings and facilities program in the Bureau of Prisons, the level requested will fund minor repair projects and payments under the lease/purchase agreement for the Oxford, Wis., facility. Decreases reflect the nonrecurring costs associated with rehabilitation and renovation projects and planning and site acquisition.

For the National Institute of Corrections program, the request will allow for the delivery of training and technical assistance services to State and local correctional agencies at effectively the same level as 1982.

The Office of Justice Assistance, Research, and Statistics includes the "Law enforcement assistance" and the "Research and statistics" appropriations. In keeping with the Department's commitment to provide necessary support to State and local criminal justice systems in the areas of research, evaluation, and statistical collection and analysis, the Department is requesting current levels of funding for the "Research and statistics" appropriation.

This appropriation includes the National Institute of Justice and the Bureau of Justice Statistics. In these areas we believe that Federal funding can be utilized effectively on a selected basis to promote long-term improvements in the operation of the criminal justice system.

With respect to the "Law enforcement assistance" appropriation, I am once again proposing that funding for juvenile justice programs be eliminated. This proposal does not reflect a determination that these programs are unwarranted; rather, it reflects a belief that the major statutory requirements underlying these programs have been substantially satisfied and that further efforts with respect to individual projects are best controlled and funded at the State and local levels.

Under this approach, individual projects can be framed to respond to local variations in the nature of juvenile criminality and its relationships to adult criminality. This approach also recognizes that crime prevention and control are fundamental responsibilities of State and local governments.

OTHER DEPARTMENT REQUIREMENTS

The Department's request for general administration includes the elimination of the State and local drug grant program, and a minor increase in funding for the Federal justice research program.

The drug grant program provides funds to establish operational information exchange facilities which primarily involve and serve State and local law enforcement organizations. As I have said, activities of this nature are properly the responsibility of State and local governments, and are best controlled and funded at that level.

The increased funding for research is needed to continue efforts in the priority areas of immigration policy, drug enforcement, and violent crime.

The Department of Justice budget request also reflects the proposed transfer of \$20.2 million and 333 positions from the Department of Energy, and \$1.299 million and 32 positions from the De-

partment of Education. These transfers are part of the President's proposal to abolish these Departments.

While I am not in a position to discuss these proposals in detail, these transfers would include our assuming responsibility for energy litigation under the Emergency Petroleum Allocation Act, and for civil rights enforcement and litigation activities from the Office of Civil Rights in the Department of Education.

In conclusion, I am requesting the authorization and appropriation of a 1983 Department of Justice budget which supports the Federal law enforcement levels that the Congress has thus far made available for 1982. I urge you to join with us again in this commitment to law enforcement. I also ask that you support us in the elimination of those programs for which the limited Federal dollar is no longer available.

Thank you, Mr. Chairman. I will be pleased to answer any questions you or the members of the committee may have.

The CHAIRMAN. Thank you very much, Mr. Attorney General.

Mr. Attorney General, before proceeding with some questions, I should like to advise you that in view of the limited time we won't be able to direct all the questions that we feel are important in fulfilling our oversight responsibility. We intend to send you some written questions and hope you will respond to them.

Attorney General SMITH. We will be happy to.

The CHAIRMAN. That leads me to this statement, Mr. Attorney General: As you know, you and I and members of this committee and members of your Department have separate responsibilities; but, of course, we are all serving one Government and we are seeking through this process to inquire. Many times because of the need for us to really get some answers, we are compelled to seek answers from your Department.

Now, I should like to state this—publicly—I am rather disturbed.

There have been numerous instances now—and I may cite just a couple of them—numerous instances where we have requested information in order for us to pursue our responsibilities, to discharge them, and to discharge them intelligently, with your cooperation, and we have gotten, frankly, no response to our communications.

Now, we are not going to be able to do our job unless we get these responses.

I recognize the need for your Department, and you as the head of your Department, to be very discreet in situations where you feel the matters are sensitive and you feel should not be disclosed. However, I think we have been circumspect and we have made requests for information on legislative matters.

While I recognize you may feel that in some areas the information is classified or the documents may be internal documents, nevertheless I believe that we have not gotten the kind of responses we should have received. I don't think we are going to be able to fulfill our responsibilities unless we do.

Let me cite a few examples:

On June 8, 1981, we requested the views of the Department on H.R. 3269, the Malt Beverage Interbrand Competition Act. To date, no response.

On June 12, 1981, we requested views of the Department on H.R. 3268, "to improve the administration of criminal justice with respect to organized crime with violence." To date, no response.

We requested cost figures underlying the Department's decision to close the Antitrust Division regional offices and have not received any response.

We requested material on the closed *IBM* case and we were refused access.

We requested documents in relation to the FBI in regard to the so-called ABSCAM matters and have not received them.

I recognize that there may be some instances where you are trying to be protective of certain classified data and internal documents, but frankly, although I have called this to the attention of the Department through letters written to you, I still have not received these responses, and I am acting on behalf of this committee.

I would urge you in the interest of cooperating in this effort, which I think has to be a common effort in order to do the best job in the interest of the people, to see that we do get these responses.

Now, having stated the problem in this hearing, I am going to send you a letter. I wanted you to know—and I think you do know—the gravity of this problem by stating it in this open forum.

Attorney General SMITH. Our policy in this respect is quite simple. It is simple to state, but it is not very simple to implement. We want to cooperate with this committee or any congressional committee to the fullest extent that we can. To the degree that we have received requests, needless to say we received a great many of them, and it is possible we may have overlooked some of them somehow; of course, that is no excuse.

Our policy is to respond to all requests and respond promptly. In those cases where we cannot respond, we give you a very good reason as to why we cannot respond. I know there are, at times, certain problems and reasons in various cases why we cannot comply.

Certainly, disagreements are expected. In any case, we certainly feel that this committee and any Member of Congress is entitled to a response and an answer, and in those cases the documents cannot be provided certainly that Member is entitled to an explanation as to why that is the case.

We would be most happy to look into the examples you gave us and I will personally determine what happened in each of those cases.

The CHAIRMAN. I wish you would, Mr. Attorney General, because, as you know, I have cited instances where not only documents but also the views of the Department were requested. As I have said, we received no response.

Attorney General SMITH. You mean no response at all?

The CHAIRMAN. That is right.

Attorney General SMITH. There is no excuse for that. I certainly will look into that and I apologize. There is no excuse whatever for our not providing you a response of some kind to a request of that kind.

The CHAIRMAN. Thank you very much.
Mr. Edwards?

Mr. EDWARDS. Thank you, Mr. Chairman.

Mr. Attorney General, there apparently is under review a draft Executive order on classification, and this order would make it easier for the executive department to classify certain kinds of material.

One of the reasons given for the change is to avoid freedom of information litigation and certain perceived problems associated with that litigation.

Now, the Justice Department is responsible for defending freedom of information suits against the Government, so I assume that you are playing a role in drafting this order. Can you describe the role that your Department is playing in this review of the draft executive order on classification?

Attorney General SMITH. We have representatives who participated in that discussion and deliberation from the beginning. As you know, the appropriate congressional committees have also been involved in that process.

Mr. EDWARDS. Which divisions of the Department of Justice are involved in that review?

Attorney General SMITH. Our Office of Legal Policy and also our Office of Intelligence Policy 2d Review.

Mr. EDWARDS. Since the draft order will have a lot to do with the jurisdiction of the House Judiciary Committee, I would be curious as to why the Judiciary Committee was not consulted and asked for comments as you asked the other two committees with oversight responsibility—the Government Operations and the Intelligence Committees?

Attorney General SMITH. I would have to look into that, Congressman Edwards.

Mr. EDWARDS. I would appreciate a response. Thank you.

[Committee questions and Department of Justice responses follow hearing record.]

Mr. EDWARDS. We have also heard rumors that the administration is reviewing the espionage laws with a view to adding penalties for disclosure of classified information. Now, as the law is, only disclosure of certain very limited kinds of classifications is penalized; is that correct?

Attorney General SMITH. That matter is under very preliminary review; it is now being studied. So far as I know, no conclusions have been reached as yet.

Mr. EDWARDS. We would also appreciate being consulted on that proposed legislation.

Now, Mr. Attorney General, in its budget message the administration indicated its desire to discourage private lawyers from taking on civil rights, environmental, freedom of information, and other cases against the Federal Government. It does so primarily by setting an artificially low hourly cap on fees based on Government employees' salaries. It seems clear that at \$25 an hour this kind of pay is certain to bankrupt private lawyers.

The budget message also implies that so-called public-interest attorneys would never be eligible for attorney fee awards from the United States.

At the same time this administration has abandoned civil rights enforcement, has sought the elimination of the Legal Services Cor-

poration and is supportive of measures which would prevent the Federal courts from enforcing civil rights laws.

In view of these positions, how can you seriously say that your administration supports civil rights enforcement?

Attorney General SMITH. As a matter of fact, I just happen to flatly disagree with you, Congressman, on the one area that I am particularly familiar with, and that is civil rights law enforcement.

This is a statement that is very easily made—that we are abandoning civil rights law enforcement. That is flatly untrue.

There has been a good deal of propaganda spread around designed to create that impression. It is nothing more than that. It is propaganda.

We are enforcing the civil rights statutes to the fullest and I will be very happy to provide to you the data and statistics which support that statement.

Mr. EDWARDS. We are planning to hold a series of hearings on that particular subject. I hope at that time also that your Department will be able to explain how a law firm in these kinds of cases can exist on \$25 an hour.

Attorney General SMITH. Of course, that is another matter.

Mr. EDWARDS. That is part of the whole picture, though.

Attorney General SMITH. I might say some of us in Government are getting along on just about that same amount.

Mr. EDWARDS. But they have an annual salary. That is a different picture from people who go to court.

Thank you very much.

The CHAIRMAN. Mr. Fish?

Mr. FISH. Thank you, Mr. Chairman.

Mr. Attorney General, there are a great many questions in the crime area, which concern me and that I would like to ask but since we have the chairman of the Subcommittee on Crime and the ranking member here this morning, I will start off with immigration.

On page 7 of your testimony, you refer to a new program activity concerning the processing, maintenance, transportation, and initial reception of Cuban/Haitian entrants. I understand that the staff of our subcommittee was briefed last Friday on this. It comes as news to me.

Can you explain the rationale for it and the purpose of the consolidation in your Department?

Attorney General SMITH. The rationale is that the primary function of dealing with this particular group really has to do with maintaining of them in—and I don't like to use the word prison because that is not what it is—it is detention. The rationale behind the move is that the Department of Justice through its Bureau of Prisons is really better equipped to handle this kind of function than HHS. As a result, with respect to that particular group the so-called Cuban/Haitian entrants, that function has been transferred to the Department of Justice and essentially will be operated through our Bureau of Prisons.

Mr. FISH. So we are talking only about the 2,400 or so Haitian entrants who are presently incarcerated at Krome and elsewhere. We are not talking about your servicing or having anything to do

with the 40,000 or so Haitians who are presently in Dade County and southern Florida?

Attorney General SMITH. Of course, INS has the responsibility for the detention of illegal immigrants, but this group is a different group. It is a fixed group; in that you are correct. The most dramatic example is the people who are out at Fort Chaffee and who have now been placed elsewhere. As you know, this Cuban/Haitian group presents a very difficult situation, with no terminal date in sight. Primarily it is a matter of housing this group.

The Bureau of Prisons is just more of an expert at doing that than is HHS; that essentially is the reason for the transfer.

Mr. FISH. Mr. Attorney General, as you know, there are many of us who feel that the Immigration Service will have greater responsibility, particularly in the area of enforcement, as you move toward the kind of reform legislation proposed by the administration. When I look at your budget, it seems to me that, except for the 57 new positions for this new program activity that you are assuming, the budget does not call for any increase in personnel.

We hear time and time again about the Service suffering from a shortage of personnel. I would ask whether you think that my statement of facts is correct and if you think the Immigration Service can perform its mission with the present level of personnel?

Attorney General SMITH. Actually, there is no reduction in personnel. As a matter of fact, there is room for an increase; however, the problem with INS really has not been a lack of personnel. Rather it has been a lack of organization, a lack of policy direction and, to a certain extent, a lack of resources.

We have added to the resources in 1982 and we are asking for another addition in 1983.

Yesterday, I swore in the new Commissioner of INS. We now have leadership in place for the first time in 2½ years. What that organization really needs is just exactly that—leadership and policy direction. We think we have provided the necessary leadership because senior policy officials at INS were brought on board even some time before being confirmed.

As you know, we are also attempting to establish new policy direction through a new immigration program. This program is now before the Congress, and we certainly hope that this session of Congress will act on that immigration initiative. It is badly needed and, I think, it is well recognized that it is needed.

With the two changes, that is, new leadership and policy direction, we think that the INS can certainly do its job and do its job well. I do recognize, however, that INS has a major challenge before it.

Mr. FISH. Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Danielson?

Mr. DANIELSON. Thank you, Mr. Chairman.

Mr. Attorney General, I am glad to hear the emphasis of the last discussion on immigration, because I personally believe that the vulnerability of our borders is a problem affecting our society and our economy. I hope that you will bend every possible effort to do something to tighten up our control over immigration, whether it be by law or by enforcement.

Along that line, I hope that you will stand firm on protecting the jurisdiction of the Department of Justice and the INS over control of immigration.

I have observed in many areas the State Department seems to have encroached rather deeply and immigration becomes a sort of international political football. This trend is dangerous and I hope you will be very firm in guarding your jurisdiction.

I note in your budget that you request \$415,000 extra to pay private counsel in Federal tort claim cases. Is that an increase or decrease over last year?

Attorney General SMITH. That is an increase.

Mr. DANIELSON. As you know, we are trying to do something with the Tort Claims Act here in Congress. That is an increase. What is the total amount you are spending on private counsel in these cases, if you know?

Attorney General SMITH. We will provide that figure for you, Congressman.

[Information follows hearing record.]

Mr. DANIELSON. I feel that is an expenditure which, if we could, we ought to obviate by having a better procedure.

You mentioned prelitigation counseling to client agencies. Does this include any instruction on how to avoid those situations which might give rise to the so-called constitutional tort cases against the Government?

Attorney General SMITH. I am sorry, I misunderstood that question.

Mr. DANIELSON. One of your objectives in the Civil Division, according to the budget, is to provide prelitigation counseling to client agencies to insure sensitivity to their needs. I wondered, does this include in that counseling any instruction or guidance as to how they might avoid situations which give rise to these constitutional torts?

Attorney General SMITH. Indeed so. We certainly intend it that way.

Mr. DANIELSON. Good. I hope we can make some progress along that line.

I understand that we presently have about 1,500 of the so-called constitutional tort cases involving actions against Government employees. In your management computer system which your Office of Management Information has, will it be able to supply information to give us; that is, the information on the nature, extent, location, and so forth, of these constitutional tort cases? I have been wrestling with this problem for a while and it would be helpful to use, if we could find some workable, meaningful breakdown of how these cases arise, their nature, their origin and so forth.

Do you know whether your management computer system will be able to give you that information?

Attorney General SMITH. Yes, I think we can do that. I regret to say the number is even higher than the number you mentioned.

Mr. DANIELSON. Mine was a kind of uncomfortable number. Since it is higher than that, we really need to get some work done on the problem.

Attorney General SMITH. I heartily agree with you about the way that the Federal Tort Claims Act should be amended by Congress, and we certainly hope it will. It will simplify things all around.

Mr. DANIELSON. There are some knots in it. I think the basic thrust is not difficult but there are a few sensitive points in it. I enlist very strongly your help in trying to overcome them.

We just passed and the President signed a bill including certain types of National Guard activities within the Federal Tort Claims Act. Have you considered the potential exposure to that new law in connection with your budget request?

Attorney General SMITH. We are in the process of studying that.

Mr. DANIELSON. The last thing I have here is the swine flu cases. I understand some 16 of them have resulted in judgments against the Government. Has the Government considered going back under its subrogation provisions against the drug manufacturing companies?

Attorney General SMITH. I would have to look into that, Congressman.

Mr. DANIELSON. I know you are interested in debt collection. It seems to me we might have an angle on them.

Attorney General SMITH. I can certainly say that if we are not, I would be very surprised.

Mr. DANIELSON. I notice under the Parole Commission you are requesting a reduction of 15 employees. You have some necessarily added expenses. I also note in corrections we have 17 percent more prisoners.

How are we going to handle 17 percent more prisoners with 15 fewer employees in the Parole Commission?

Attorney General SMITH. As a matter of fact, the 15 fewer employees in the Parole Commission essentially are unfilled positions. Actually, that change will not in any significant way affect its operation.

Mr. DANIELSON. You feel it will not be a reduction then in the performance capability of the Parole Commission?

Attorney General SMITH. I think that is correct.

Mr. DANIELSON. Thank you very much.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Butler?

Mr. BUTLER. Thank you, Mr. Chairman, and thank you, Mr. Attorney General, for spending this time with us this morning.

An early impression of this hearing is that it might be an occasion to chastise the Attorney General. I would, therefore, like to say at the outset that I appreciate the job that you and the Department are doing, particularly in the area of antitrust. I think your initiatives in the area of violent crime, immigration, and drug enforcement are significant and appreciated.

Attorney General SMITH. I think the chairman was just trying to make me feel at home.

Mr. BUTLER. I also want to note that you have been too much of a gentleman to ask this committee when you can expect it to report criminal code reform legislation. It was nice of you not to mention the fact that we have been at it for so long, and that it had its genesis with Governor Brown of California—not the gentle-

man who is there now, but his father. So I think it was nice of you not to ask the committee what we have been doing all these years.

I just wanted you to know that I share your curiosity.

Mr. Attorney General, on the subject of letters to which you have not replied, some 12 Republicans and I delivered a letter to you on February 4, 1981, with reference to the civil rights proposal. I would appreciate it if you would go back and review your unanswered mail to see if you could not give us a response to that.

Attorney General SMITH. That one must set a record if you said 1981.

Mr. BUTLER. Yes, sir.

Attorney General SMITH. We will certainly do that. Although I would add that on February 2, 1981, we probably were still in a state of organized chaos.

Mr. BUTLER. That is the reason I brought it up today.

Attorney General SMITH. We will certainly look into that.

Mr. BUTLER. Thank you. I appreciate that.

We have discussed in earlier hearings the U.S. trustees program and we have been given a copy of a letter of February 19, to the chairman dealing with a proposed closing of the Chicago office of the U.S. trustees. I want the U.S. trustees program to work. It is a pilot program under the statutes and all of us who participated in that were active in it. However, if it is not going to be funded properly, it is not going to work properly. If you are going to try to get rid of it, and that is the direction in which you are moving, I think you have to give some serious thought to just exactly what you mean when you say that we can transfer or return this caseload to the judiciary under the overall supervision of the Administrative Office of the U.S. Courts at a considerable savings in operating costs.

I cannot understand that and I cannot accept the Chief Justice's authority on how to save money in the bankruptcy area because, to begin with, I really do not think he has much sympathy with what we are trying to do in bankruptcy. Since it is a statutory pilot program, the first thing I would ask you is where you get the statutory authority to close an office when it is clearly listed in the statute that the office is to be maintained during the pilot period?

Attorney General SMITH. Actually, the Chicago situation is separate and distinct from the overall program itself. Our budget was cut from \$6.5 million to \$5 million last year. Closing the Chicago office had to do with that budget reduction. Chicago was the logical place to do it, for two reasons:

The first is that the expense of operating that office came closest to the amount of money that we needed to save and, second, at the time the office was closed, there was no incumbent U.S. trustee there. The U.S. trustee had either resigned or retired.

Mr. BUTLER. He and his assistant resigned in a fit of pique.

Attorney General SMITH. It seemed to be the logical place to reduce, having only \$5 million rather than \$6.5 million to work with. The issue of closing the Chicago office, of course is separate and apart from discontinuing the entire trustee program.

Mr. BUTLER. It is separate and apart, but it is still statutory authority.

While we are on that subject, I want you to take time to review just exactly what you are talking about when you say that the reduction is \$1.5 million. Actually, the reduction was somewhat less than that because \$850,000 had been reprogramed earlier to the U.S. Attorney's Office and that was not the basis on which that proposal was made. So, I would ask you to look more carefully at those figures before you close the Chicago office and look more carefully at the statute which says that you shall maintain in the northern district of Illinois a pilot program.

The question which really concerns me is this—as the Department of Justice moves in this direction, what are your plans for the statutory functions of the U.S. trustees? Who is going to do these jobs and how will there be any savings? The appointment of trustees is your responsibility. They supervise bankruptcy case administration. They preside at the first meeting of creditors and they serve as trustees in cases where no private or standing trustee may be willing to serve.

All of these functions were deliberately and knowingly assigned to the U.S. trustees as an efficiency operation to in effect save money in the operation of the courts.

Now, before you go down this road—and I suspect you were sent down this road by the OMB in the first place and it may have seemed like a good idea at the time—I really would appreciate it if you would take another look at exactly how you would shift these functions from the U.S. trustees program to the administrative office or wherever and how it would save any money.

My perception at the time we wrote the legislation and since indicates that it cannot be accomplished at a saving.

Mr. Chairman, I know I have taken too much of my time, but may I make one more statement in this area?

The CHAIRMAN. Yes.

Mr. BUTLER. We also have under evaluation a contract with the ABT Associates of Cambridge, Mass., and the work has already started. It is a \$350,000 contract. That report is expected in 1983. Would it be wise to curtail this program before we hear from the consultants in this area? I know that you have 1,000 things that you have to respond to and I do not want to embarrass the administration or the Department, but I sincerely ask you to take a look at what you are doing in this area.

If you conclude that it has to be phased out and that is the thing to do, then I think we need a more orderly approach.

Thank you, Mr. Attorney General. I really do not expect you to respond to that.

Attorney General SMITH. Let me just say this. We have looked at it and will continue to do so.

Generally speaking, however, we just do not think that this is a function which should be within the jurisdiction of the Department of Justice. We think it should be within the judiciary and that this function is in essence a judicial function and consequently that it really should be lodged in the judiciary.

There are various aspects of the program that should be looked at. We are not taking the position that it is not a good program. As I said, we think that it is an appropriate function for the judiciary and not for the executive branch.

Mr. BUTLER. Thank you, Mr. Chairman.

Thank you, Mr. Attorney General.

The CHAIRMAN. Before I ask Mr. Hughes to pick up the questioning, going back to what Mr. Butler was asking about, Mr. Attorney General, I must state that it seems to me that Congress made a policy decision some time ago, after considerable study by a commission over a period of time, as to the best place for this responsibility; Congress determined it best to separate the administrative from judicial responsibility and therefore created the trustees program.

It seems to me that what is happening now is that the executive branch of the Government is saying, "Well, we are making the decision it should not be there." If you feel the program should be in some area other than the executive branch, that might be something to consider. But the commission, this Congress and this committee, after giving a great deal of attention to the subject, felt that in the interest of efficiency, in the interest of fairness, this bankruptcy problem would be best dealt with through the U.S. trustees program placed in the executive branch.

Attorney General SMITH. Mr. Chairman, as long as it is there we will certainly follow the current policy. What we are doing now is to recommend that it be transferred back to the judiciary.

The CHAIRMAN. Thank you.

Mr. Hughes?

Mr. HUGHES. Thank you, Mr. Chairman.

Welcome, Mr. Attorney General. I want to join my colleagues in thanking you for sharing your time with us today.

I chair the Subcommittee on Crime. I am fortunate to have Hal Sawyer as my ranking minority member. We have a good bipartisan committee that is trying to develop what we think is a sensible crime program.

I don't want to appear like I am beating on the Department of Justice either, but I have some concerns over the direction we are taking in certain law enforcement categories.

Most of my concern deals with the Drug Enforcement Administration. Since 1978—and I have submitted to your office the documentation—we have lost ground each and every year in real terms. I see the same thing occurring in this budget submission, in each of the categories that you look at where you deal with enforcement of Federal law and investigation: Domestic enforcement where we are dropping down by \$1.2 million; foreign cooperative investigation by \$230,000; compliance regulation reduced by \$259,000; State and local assistance training programs and the State and local laboratory service are both cut by \$29,000; State and local task force operations, a \$57,000 decrease; intelligence, also a \$230,000 decrease. Research and development, although we stay at the same level, based on inflation at 7 percent we are still losing ground there. In support operations: DEA laboratory services are down by \$115,000; DEA training is down \$29,000; technical operations down \$86,000. At a time when we have probably more serious drug problems in this country than anytime in our history, I don't think that that is what the American public wants us to do in this area of law enforcement.

I don't know how we can possibly do more, with fewer resources in combating what has become our greatest national malady by committing fewer resources to what is perceived as the world's greatest drug enforcement agency, our own DEA.

Attorney General SMITH. Congressman Hughes, actually there is no programmatic impact as far as DEA is concerned. Those figures are there but they have no significance at all so far as the effectiveness of the drug enforcement effort. On the contrary, the drug enforcement resources have been greatly increased because of their new association with the FBI and the combined abilities of both these agencies in meeting the overall drug problem. I certainly agree that the drug problem is the principal problem we have.

The fact that DEA has been augmented by the FBI, we think, is going to greatly enhance the combined effort.

Mr. HUGHES. I agree with you, so far as complex financial investigations that certainly is the case, but insofar as the day-to-day activities of the DEA, the FBI's role is going to be a rather limited one even under the scenario you have described.

At a time when we are increasing FBI resources, part of which is unquestionably because of the additional responsibilities the FBI has picked up, we are decreasing DEA's resources because whether or not we remain static, we are losing resources because inflation is wiping us out at roughly 7 percent, we are losing ground.

Even though you suggest that we were able to seize \$200-some odd million in assets, that is a drop in the bucket compared to the billions and billions of dollars of activities generated. In southern Florida alone, as you know, it is estimated that drugs have become a \$60 billion industry, so we are just scratching the surface.

Attorney General SMITH. I can certainly assure you there will be no decrease in the DEA effort, just looking at the DEA alone. If you add to the DEA effort, the resources of the FBI, the total resources against the drug problem will have been greatly enhanced.

Mr. HUGHES. I was in southern Florida, as I know you were, and other members of your staff, talking with some of the enforcement people, State and Federal. Even though you committed additional agents and we have an additional 40 or 50 FBI agents, we are moving DEA personnel around from investigation to investigation. We need twice as many DEA agents there right now to be able just to cope with the problems.

We are actually pulling DEA people off one investigation and putting them on another one because that happens to be the priority for that day. We can't conduct indepth investigations in that fashion, whether it is DEA or any other law enforcement agency.

Attorney General SMITH. I think it is true that any agency wishes to have more resources than it has, but there are only so many resources available. We think that there are better ways to do what has been done in the past, especially through organizational changes, efficiencies and utilizing available resources that have not been fully used to now. That is the reason that the FBI is being brought into this area.

I recognize this is a tremendous problem. However, it would not make any difference how many dollars or people you had, it still would be a major problem. We are very encouraged and very optimistic about this new combination and the results it will produce,

and we have already seen examples of that, although it has only been formally in effect for 6 months.

Mr. HUGHES. On page 2 of your statement you indicate that, through Department initiatives, the Navy and the Air Force are furnishing information to law enforcement agencies.

Recently I visited EPIC. I know you were at EPIC. They were happy about your visit. I was there last week with Marshall Cain of your staff. I found in talking with them that we are really getting very little intelligence information from the Department of Defense.

I think you will agree, any information will go through EPIC. We have seen very little cooperation to date from the military authorities as a result of the posse comitatus changes that we enacted.

Attorney General SMITH. They told me the same thing when I was there, that they had received very little; however, this is a matter of developing a new program and it takes a little while. We are seeing more and more results from this change with each day, not only through EPIC but in other respects. We would anticipate that as the military becomes more familiar with what is needed, they will provide it.

Mr. HUGHES. I wish I shared your enthusiasm. I think it will require oversight to force the Department of Defense to provide it.

I am concerned over the failure to comply with title 21, United States Code, section 1111-1112, which requires the President to appoint a policy coordinator to direct policy from the White House and to furnish a report by March 1 of each year. Even though I know that a senior policy adviser in the person of Carlton Turner has been appointed, I am not so sure that complies with the statute. I hope you would take a look at that and what is required to be submitted to the Congress.

We have requested that from your office and to date have not received an adequate response.

Finally, your office made some recommendations with regard to H.R. 4481, the Justice Assistance Act, which passed the House a couple of weeks ago by about a 4-to-1 margin. You made some constructive recommendations in improving that legislation and they were adopted on the floor. I wonder if that means that at this time the administration will support that legislation?

Attorney General SMITH. I would have to look into that, Congressman.

Mr. HUGHES. I would appreciate hearing from you.

Thank you, Mr. Chairman.

The CHAIRMAN. Mr. Moorhead?

Mr. MOORHEAD. Thank you, Mr. Chairman.

Mr. Attorney General, it is good to have you here with us this morning.

One of the issues that concerns me and which has been touched on earlier is our illegal alien problem which is so important in the area I serve. I see that one of the elements of your program is to put a burden on the potential employers who hire illegal aliens.

I wonder what kind of tool you are going to put in their hands to make that determination?

We had a bill of this nature before and it was one that the chairman was considering in this area. One of the reasons for opposition

was that many people felt that if the employer has that responsibility, it would put people of Mexican or Latin nationality at an unfair disadvantage. They might be singled by the employer for special interrogation at the time the job began, whereas others would not face that. Is the Government going to provide any method—for instance, through a social security card that is difficult to duplicate or something similar—that the employer can rely upon to check each potential employee so that he can avoid that problem?

Attorney General SMITH. Yes. As a matter of fact, the program, both as proposed by the administration and now being debated in Congress would provide that protection. The system provides that if an employer did actually inspect whatever the identifier is, such as a driver's license, social security card, an enhanced social security card, or whatever it is, and if, as indicated under the administration proposal, he signs an acknowledgment he has done so, then he has absolute protection.

There is no basis whatever for him to discriminate against anybody, because if he does that he has an absolute defense. There is no basis at all, at least as far as that part of the program is concerned, for it to be the type of problem which would create a situation where someone would be discriminated against.

Mr. MOORHEAD. You have been working on this problem now for about a year and it is one that nobody has been able to really solve so far, so I am not trying to put any additional burden on you.

Is this problem, in your opinion, solvable in view of the porous border we have? How much can we realistically control through the proposals you are making and others that might be put into effect?

Attorney General SMITH. I don't suppose we will ever solve it in the sense of having absolute control over our borders. I think that we can do a great deal toward slowing it down and slowing it down by a very substantial degree.

The only remaining credible enforcement tool that we have in this respect is the employer sanction. There appears to be no other technique that anybody has pointed to yet that will do a better job. Of course, that also points out the other part of the program which complements it, and that is what you do with the estimated 3 to 6 million people who are already here. So, the centerpiece of the program is really employer sanctions, but the other half of the program addresses what you do with the people already here.

The administration has made its proposal in that respect and the proposal is being debated in Congress right now. We certainly hope and strongly urge that, whatever the answer, something be passed out of this session. It is one of the most pressing problems that we have domestically.

Mr. MOORHEAD. There is one area that I want to give you a chance to discuss further before we go on. That is the drug enforcement area.

Where do we stand at the present time in the war on drugs? Are we getting control of it or is it something that is still running away and becoming more serious with each passing day, as the previous question might have indicated?

Attorney General SMITH. We are certainly working at getting control of it. For example, we are placing great emphasis on the higher echelon drug traffickers. One way to do that is to follow the money trail.

We had an operation which involved the FBI and the DEA in Florida called Bancoshare, which was a highly successful operation and seized millions of dollars worth of assets and many top level drug traffickers. It was done really through following the money trail.

This is one of the areas where the FBI has great expertise and one of the areas where by adding that resource to what DEA is doing we think we can make major progress in this area.

It is essential to get the people at the top, the people who are really running these organizations, as distinguished from the fellow who is just selling illicit drugs on the street.

Mr. MOORHEAD. Thank you.

The CHAIRMAN. Mr. Mazzoli?

Mr. MAZZOLI. Thank you, Mr. Chairman.

Mr. Attorney General, welcome. It is nice to see you again. I was delighted to be with you yesterday when we swore in, finally, the Commissioner of the Immigration and Naturalization Service, Mr. Alan Nelson. It was an important day, and I think it gives the Service now some of the tools it has lacked in the past to get the job done.

Let me try to focus my attention on immigration.

I wasn't here at the beginning this morning. Apparently the chairman of our committee had some problem in getting answers to letters. I have to say in candor, so have I. You have some of your staff in the audience here. Let me request that they take down this information:

On October 23, 1981, I sent a letter to Ms. Meissner dealing with the kind of followup that INS has on the departure of those aliens who have been the subject of private immigration bills which have been rejected. I notice that as of the end of fiscal year 1981 there were something like 23,500 unexecuted final orders of deportation pending. Part of it is explainable because of the Cuban/Haitian influx and so forth, but that is an awful lot of people who are still around the United States who have been officially ordered deported.

My letter of October 23 has not been answered. Neither has a letter of December 4 to Ms. Meissner dealing with some information on management issues at INS. Of course, you and I agree that management is a very important aspect of the work that INS does. Using computers and using management techniques will enable it to do its job better.

Then two letters, one to you on December 10 dealing with the kind of case that embarrassed our subcommittee. It was an incomplete record dealing with a gentleman who was recommended for naturalization whose criminal record had not been fully examined. There were some questions that I propounded to you on December 10 which have not been responded to.

Last, I mention my letter to you of February 2, which deals with refugees. I am particularly interested in, and Mr. Danielson has been, too, the question of refugee status.

As you know, there are certain instructions which Ms. Meissner told me on January 28 were prepared and were going to be issued the next day to the INS field officers on how to determine refugee status. I understand as of last Thursday, which is, of course, 1 month later, that those field instructions have not been issued.

My letter to you of February 2 deals with that subject.

I wonder if you are aware of that and whether you have any information for me today on when those field instructions might go out?

Attorney General SMITH. We will certainly get an answer to you right away. You received no response at all to those letters?

Mr. MAZZOLI. That is my understanding. I have checked with my staff two or three times to make sure we are on the record correctly. There may have been some reason for this.

Attorney General SMITH. Not even an acknowledgement?

Mr. MAZZOLI. That is my understanding. Of course, earlier one of the representatives from your Department was in my office. I was pretty inelegant in my language toward him regarding some letters I had not received any response to, not even an acknowledgement. I realize how busy things are down there.

Attorney General SMITH. I want to say there is no excuse for that. Once again, I apologize for it.

Mr. MAZZOLI. Our relationship has been good and it continues to be good. It is just that there are some things on which we need information which helps us to do our job.

Let me move on to one area that I am a little concerned about, and I wonder if you have any information that you can send us.

There are something like 1,300 unfilled positions at INS now. The budget that the President proposed for fiscal year 1983 is more or less a steady-state budget; it does build in an inflation factor but no real increase in INS strength. Are you prepared to say when we might fill these very nearly 375 positions in the border patrol, 129 positions in investigations, 120 in records? Can you give some idea when some of these positions might be filled?

Attorney General SMITH. I can't tell you exactly. I certainly can tell you that now we have an INS Commissioner in place and I think you can expect to see some rather dramatic organizational changes that conceivably could involve the need for fewer people, rather than more. If more are required then we will certainly fill those positions. I think we will have to wait until he has been able to take charge and take full control before answering that kind of question.

Mr. MAZZOLI. My time has expired. I would ask the Chairman if maybe a second round will be permitted. I do have some other questions. Is that possible?

The CHAIRMAN. I think we have to recognize that the Attorney General has some time constraints.

Mr. MAZZOLI. Mr. Attorney General, just in general areas, let me tell you the category of the questions I wanted to raise. I will send these to you in writing. One deals with the construction of a permanent detention facility. To what extent is the administration committed to that? I see that the \$35 million does not reappear in the 1983 budget.

Attorney General SMITH. We hope that is still in the 1982 budget.

Mr. MAZZOLI. Thank you.

This second matter relates to the State Department and the Department of Justice. Is there any consideration being given to extended voluntary departure and other types of momentary respite from deportation for the undocumented people in the United States from El Salvador?

Third, there are some 57 positions and \$58 million in the 1983 proposed INS budget for dealing with the long-term detention management of Cubans and Haitians. To what extent are you committed to getting the INS into a wholly new activity, namely, long-term detention? Up to now their detention responsibility has been short term, a few days. Now we are moving INS into what amounts to long-term activity in detention. This is an activity for which the INS may not be trained.

Attorney General SMITH. With respect to the long-term detention we are utilizing or are in the process of utilizing the Bureau of Prisons. The Bureau of Prisons is a very well-run organization, and it has great expertise in that area. We hope all detentions will be short term as soon as we can get the processes straightened out; but with respect to the longer term, the Bureau of Prisons will be providing that service.

Mr. MAZZOLI. Currently, of course, the INS people are doing it, so that is the question I ask. Do you want the INS to get into long-term detention permanently?

Next you are proposing to cut back INS abroad, even at the time when the question of determining refugee status is one of the more important elements of the refugee program. I will be asking some questions on that, whether that is inconsistent.

I will also be asking questions about whether or not there is an intention to acquire land to enhance the fencing of certain of the more traveled areas at the southern U.S. border.

I am very committed, and I am glad the Attorney General and the Department are, toward automated data processing, including nonimmigrant visas. I should add nonimmigrant departure and arrival. I know that Price-Waterhouse has just completed a study of that question and I would ask to have some information to the extent that you can supply that.

I thank the Chairman for his indulgence in allowing me to go a little bit longer.

The CHAIRMAN. Let me ask the Attorney General, do you, Mr. Attorney General, have time constraints that you can't stay beyond 12 o'clock?

Attorney General SMITH. Twelve o'clock would be about the maximum, I think.

The CHAIRMAN. That means that we are going to have to allow the rest of the members to have a chance, Mr. Mazzoli, and I think we will have to pass you.

Mr. MAZZOLI. I understand. I respect the gentleman's time problem.

Attorney General SMITH. We will be very happy to discuss it with you, because you are talking about a good many things that we have definite feelings about.

Mr. MAZZOLI. I am satisfied, Mr. Chairman. I appreciate your indulgence and the committee's, in getting these subjects on the record. I am concerned with the fiscal year 1983 budget, staffing, changes in goals. Those we can take up later and put them in the record.

The CHAIRMAN. Mr. Kindness?

Mr. KINDNESS. Thank you, Mr. Chairman and Mr. Attorney General. I add my thanks to those expressed by my colleagues for sharing your time and thoughts with us this morning. I assure my colleagues that the problems of communication with the Department of Justice do not extend solely to the Committee on the Judiciary. The Committee on Government Operations has had similar problems.

I would like to inquire about one area in particular which may be answered by supplemental testimony in writing.

It is proposed that there be transferred 333 positions and \$20.248 million in fiscal year 1983 from the Department of Energy for petroleum regulatory activities and administrative support. I wonder if we might be supplied with information as to how many of those positions are professional positions and administrative or clerical support positions. Frankly, I cannot help wondering whether that has been examined and found really necessary?

Attorney General SMITH. We will be glad to supply that information. Actually, what we are doing is taking over that part of the enforcement function now carried on by the Department of Energy. We haven't yet had the occasion to really analyze how we would handle it, whether we can do it with fewer people or what the workload is because it has not gotten far enough along. When the analysis is completed, we will certainly do that.

Mr. KINDNESS. I would certainly appreciate that information.

There is one other area which I would be happy to address in a letter to you. The Committee on Government Operations Subcommittee on Government Information and Individual Rights held a first oversight hearing with regard to the coordination between the Department of Defense, Bureau of Customs, and other law enforcement agencies in the drug enforcement area after the change in the posse comitatus law.

It became apparent, I think, that there is a need to develop some mechanism for long-term planning to integrate these efforts on a cooperative basis.

I would like to pose a question or two in that area.

In your testimony, you indicated on page 5 that you are creating a high-level Department of Justice committee to oversee the development of drug enforcement policy and to assure that all of the Department's resources are effectively engaged in that effort. That might be a very pertinent point from which to activate the Department of Justice's part of this mechanism of cooperation. So, I would be happy to get your thoughts on this matter since this committee as well as the Government Operations Committee would be interested.

Attorney General SMITH. Yes, the Committee that I referred to on page 5 is an in-house committee. In addition, we have established a Cabinet Council which was established really for three

particular purposes: One involved immigration and covers various agencies of Government and another addresses the drug problem.

The President announced in his speech before the International Association of Chiefs of Police that he intended to establish an interagency task force or group to better coordinate the activities of the State Department and the Treasury and Justice Departments and so on; that is now in the process of being implemented.

I think a great deal can be done, and a great deal needs to be done in the drug enforcement area. We intend to pursue that fully.

Mr. KINDNESS. Thank you very much.

I yield back the balance of my time.

Mr. CHAIRMAN. Mr. Hall?

Mr. HALL. I feel left out because I have not had any letters to which you should have replied. I haven't written any, I guess that is the reason.

You indicate on page 1 of your statement that you are asking for a \$58 million program increase to fund the transfer of responsibility for Cuban/Haitian immigrants to the Attorney General, which I believe had originally been handled by some other department, Health and Human Services.

How much authority has the Department of Justice had in this area prior to this transfer of authority from the Department of Health and Human Services with reference to the placement of Cubans and Haitians in the United States? Is this new authority that you are getting now that you have not had before?

Attorney General SMITH. Of course we have been responsible for the detention function with respect to illegal aliens all along.

Mr. HALL. What new authority does this give you that you have not hitherto had?

Attorney General SMITH. This deals with a particular group of people, the so-called Cuban/Haitian entrants group, which was the subject of the Refugee Education Assistance Act of 1980.

The Cuban aspect is a particular problem because we have no basis for, nor the opportunity for, returning them to Cuba which we would normally do in other situations because Cuba will not accept them. Particularly with respect to those who are dangerous, have criminal records, or are mentally ill or what have you, we have to take care of those people.

Mr. HALL. I understand that, for instance, the administration a year or so ago attempted to transfer a group of Cubans into east Texas, which they didn't eventually do, but in the course of those conversations it appeared to us that the State Department had the sole responsibility of looking after the placement of those people after they had been placed in some area.

Now does the Justice Department have concurrent jurisdiction with the State Department in looking after the placement of these people once they have been transferred from Camp Chaffee, and that is where these were coming from?

Attorney General SMITH. That is our jurisdiction.

Mr. HALL. What part does the State Department play? Don't they pay a certain amount per person when these people are moved from a detention center into another area of the country?

Attorney General SMITH. No. As a matter of fact, State originally had that authority which was then transferred from State to

HHS. The authority to the extent that it involves this particular group has now been transferred from HHS to us.

So as of right now with respect to that group we would have the jurisdiction and State would not.

Mr. HALL. Does your Department pay a certain amount to some of these agencies who transport and place these people in areas of the United States or does that still work on a contractual basis with the State Department?

Attorney General SMITH. I am afraid I can't answer the latter part of your question.

With respect to the former we do what we can do and we do underwrite to a certain extent the expenses of relocating these people. However, HHS also has the responsibility and the authority to provide up to a period of 36 months for the care of refugees under some circumstances.

Mr. HALL. Is that a part of this \$58 million to take care of replacement?

Attorney General SMITH. No.

Mr. HALL. Where does it fit in your budget?

Attorney General SMITH. The \$58 million just deals with the cost of housing and caring for this particular group; that is, the Cuban/Haitian entrants.

Mr. HALL. While they are in the detention center?

Attorney General SMITH. That is right.

Mr. HALL. So when they are moved from the detention center to some locality under the auspices of some private organization, then the State Department would pay those private organizations, I assume, so much per person for getting them transferred out of the detention center into some placement area?

Attorney General SMITH. I would have to check into that, Congressman. I really couldn't answer that.

TESTIMONY OF KEVIN D. ROONEY, ASSISTANT ATTORNEY GENERAL FOR THE ADMINISTRATION, DEPARTMENT OF JUSTICE

Mr. ROONEY. Of the \$58 million, approximately \$43 million is for the detention cost. The remaining \$14 or \$15 million is for contracts and services provided by other agencies and private agencies.

Mr. HALL. Heretofore we said there was a contract between the State Department and these organizations. Henceforth will it be from the Department of Justice with these organizations?

Mr. ROONEY. That is correct.

Mr. MAZZOLI. Will the gentleman yield?

The CHAIRMAN. The time of the gentleman from Texas has expired.

The gentleman from Michigan, Mr. Sawyer.

Mr. SAWYER. Thank you, Mr. Chairman.

I really had not intended to ask this question, but I would like to follow up on Mr. Hall's subject matter. I am frequently asked by constituents why we do not take these totally unacceptable and disqualified Cubans that were sent to us, to Guantanamo Bay and put them on the other side of the fence surrounding our installation? There must be some good reason for that, but I don't know. I am

taking advantage of your being here and asking you why we do not do that.

Attorney General SMITH. All kinds of suggestions have been made with respect to their disposition. However, on close analysis, as tempting as it seems to be, there are always problems. We have recommendations of buying x number of parachutes. [Laughter.]

Mr. SAWYER. Mr. Attorney General, I recognize there must be some clear and understandable answer, but I would like to know what it is with respect to putting them across the fence at Guantamo Bay. I am at a loss to know what it is although I know it must be there.

I am taking advantage of you, seeing that you are here.

Attorney General SMITH. I suppose there are all kinds of problems that would be involved in that; for example, the utilization of a military base for that purpose, or the problem of just turning loose very dangerous people, sometimes mentally unbalanced people on a countryside.

Mr. SAWYER. But putting them on the other side of the fence is where they were to begin with, I might say.

Attorney General SMITH. There have been all kinds of suggestions and proposals as to how to handle this. Some of them are inviting, but there are also a host of accompanying problems.

Mr. SAWYER. If someone down in your Department could be kind enough to take time when they have it to drop me a note telling me what a good answer is, it would be very helpful to me when I have town meetings.

Attorney General SMITH. We are trying.

Mr. SAWYER. I know the answer is there, but I have not been able to get it.

One thing I notice in your Criminal Division budget request is the Office of Special Investigations which is the Nazi war criminal search which has been going on for I don't know how many years. I asked Phil Heymann, the former head of the Criminal Division, about this before and never was fully satisfied on it either; \$2.75 million are budgeted for it for the year, which is more than for public corruption, narcotics and dangerous drug prosecutions and internal security in the Criminal Division.

Now I recognize that this may involve a meritorious goal but I do not believe that we have had much success in deporting anybody.

Do you have any idea how many of these Nazi war criminals we have deported in the last 5 years?

Attorney General SMITH. We have not deported very many.

Mr. SAWYER. About how many?

Attorney General SMITH. We have been successful in eight cases; however, the appeals process has not permitted any of these to be deported. There are some 15 cases that are under active investigation. Of course, it is a declining problem.

Mr. SAWYER. Yes, it has been declining to the point where the problem is obviously going to take care of itself pretty soon. They must be all in their upper seventies.

Attorney General SMITH. That is why it is a declining problem.

Mr. SAWYER. I realize that but when we are spending more per year for that than we are for public corruption, narcotics and dangerous drug prosecution and internal security, it seems like we are

setting an inordinately high priority on a problem where we are not making much progress, compared with the amount of money we are spending every year. We have been spending every year over two and a half million dollars to deport a couple of people over a 5-year period when we are crying for more forfeiture actions in drug prosecutions, which the GAO and others have complained about.

It seems to me we have our priorities out of whack on this thing. I urge you to take another look at it.

I have just one or two other comments, although I am conscious of the time constraints. I am very sympathetic to the comments of Chairman Hughes of New Jersey. I happen to be ranking minority member on the Crime Subcommittee and he and I do see eye to eye on this. You can be assured neither of us wants to make the Justice Department any kind of whipping boy. We want to make it a partner really. Both of us have some law enforcement background and we have a lot of court background and we want to help. I have deep respect for Dave Stockman. I came into Congress with him at the same time from Michigan, and he is an exceedingly bright young man—one of the brightest, most precocious young men I have ever met. He has an excellent divinity background and excellent background in politics on the Hill, but he knows absolutely nothing about law enforcement and/or the legal practice. I had this problem with him over the Legal Services Corporation. I can see I have some problems with him perhaps on the Justice Assistance Act.

I really hope that we can rely on you. I had to ask for a one-on-one meeting with the President in the oval office on the Legal Services Corporation. I am sure the President has a lot more important things to do than to take time to talk with me about this \$170 million program. But it is because I cannot get anywhere with the OMB.

Now I have the same fear with this Justice Assistance Act that Congressman Hughes and I managed on the floor a week or two ago. It was passed by a 4-to-1 margin. As Congressman Hughes says, it really takes the best of the LEAA program to the tune of only \$170 million and tries to place it more directly under Justice. I have the feeling that I am going to get back in this money hassle with OMB.

I hope you will take a look at it and that we may have a friend there to try to help me with my administration, which I am supporting on several matters that my constituents aren't very crazy about. I would like to get some help in-house. Maybe you will take a sympathetic look at that bill so we can enlist some support in the inner sanctum.

Would you be willing to take a personal look at that and not just listen to Dave Stockman, as delightful as he is?

Attorney General SMITH. I will try to include it in my agenda with Mr. Stockman.

Mr. SAWYER. Thank you. I have one more comment.

The CHAIRMAN. The time of the gentleman has expired, but we have been liberal with time.

Mr. SAWYER. Thank you very much.

Just one more thing. I urge you to pay attention to Caldwell Butler. Caldwell is a very excellent lawyer and he has devoted about 6 or 7 years to this Bankruptcy Act. In fact he is my in-house expert and I refer all my complaints to Caldwell and he is very knowledgeable on it.

On this question of U.S. trustees, I really urge you to take a good look at it before you reject Caldwell's point of view. I had some experience in bankruptcy years ago. I know he is well-informed. There is one tremendous problem on that, just before I close, that I would urge the Justice Department to take a look at.

I get all kinds of feedback from the law firms in my district about the new Bankruptcy Act. I have not heard one complaint about the U.S. trustees aspect of it. They all seem to like that. The big problems in that act—and I have spent 30 years practicing law full time before I got involved in this bit so I have some appreciation for it—are two changes.

One of them is a general morality change which you and I cannot do much about—the attitude that bankruptcy, just like divorce, has become a “ho-hum” matter. It is no longer a disgrace. The second problem is legal advertising in this area. We have a relatively conservative little district, but we have ads running in the paper with telephone numbers. When you phone them, you are told: “No. 13 could be your lucky number. Why pay your bills when by going to 13 for a cost of \$300 you can get rid of them?” They are bankrupting the credit unions and everything.

I think someone in the Justice Department ought to come up with some recommendations aimed at curbing the legal advertising in this area that is interplaying with this act and with morality changes to cause a real financial disaster for credit unions and others.

Thank you very much, Mr. Chairman, for your tolerance.

The CHAIRMAN. Thank you very much.

Mr. Frank.

Mr. FRANK. Thank you, Mr. Chairman.

Mr. Attorney General, there have been a series of bills submitted in both Houses which propose really extraordinary, far-reaching changes in the balance of power between the Judicial and legislative branches, particularly total restructuring of the jurisdiction of all the Federal courts.

Has the Department of Justice ever asserted interest in any of those bills?

Attorney General SMITH. We will certainly have a substantial interest.

Mr. FRANK. Will you share it with the Congress at any time? We have been trying for a year now to define any indication of a position on the part of the Department. It is striking to me that these bills which really propose, as I said, extraordinary, far-reaching changes, whether you like them or not in our structure, have been debated and discussed with absolutely no expression of opinion whatsoever from the Department of Justice.

Attorney General SMITH. Actually, I think there are almost 30 bills that deal with the subject matter. At such time as a bill moves somewhere, I am sure that we will indicate not only the legal ques-

tions we may have but also the public policy questions; at such time as a bill moves—

Mr. FRANK. There will be hearings in both branches. I think the subcommittee in the Senate has acted on one of those.

Attorney General SMITH. I think the Senate has only acted on the appropriations bill.

Mr. FRANK. The Department of Justice will express no opinion on any of those bills?

Attorney General SMITH. Indeed it will.

Mr. FRANK. When? Only when the subcommittee acts on one of them?

Attorney General SMITH. We are not in a position to express an opinion on 30 bills.

Mr. FRANK. Pick any two or three. I don't understand why you have to hold off.

Attorney General SMITH. We are not in the business of rendering advisory opinions.

In other words, our function is really to advise the President at such time as a—

Mr. FRANK. You don't regard it as part of the function of the Department of Justice to give opinions to the Congress on the advisability of passing legislation?

Attorney General SMITH. Indeed so and we do, as requested.

Mr. FRANK. I am requesting now that you give us some expression of opinion of the Department of Justice on legislation that is pending. Answer Mr. Mazzoli's letters first. I don't want to get ahead of him. When you are through with that, I will be interested.

On appropriations, particularly in regard to violent crime, you refer in your statement to your Commission on Violent Crime that was appointed. As I understand, though—we are talking in terms of the legislation that was just passed which would provide the funds—the Department has no position now; is that correct?

Attorney General SMITH. No position on what?

Mr. FRANK. On the legislation Mr. Sawyer and Mr. Hughes just mentioned. You are opposed to the Office of Justice Assistance?

Attorney General SMITH. Our position is in opposition to that.

Mr. FRANK. You are recommending that we drop any funding for juvenile justice on the grounds that crime prevention and control are fundamental responsibilities of State and local governments.

With regard to prisons, although your task force did note the problem of a serious shortage of price on space, the recommendation is no Federal funds, but maybe some surplus Federal property.

Do I take it the statement on page 13 summarizes the approach of the administration to the problem of violent crime "that crime prevention and control are fundamental responsibilities of State and local governments," whether it is the Justice Assistance Act or juvenile justice or funds for the prisons, it will be the responsibility of State and local governments?

Attorney General SMITH. You cannot lump those together. You have to consider them separately. On the question of juvenile justice we are not taking a position that that program is not desirable. We are just saying that we think that it is a program, particularly considering the budgetary constraints that we are operating under, that should more appropriately be at the State and local level.

As a matter of fact, I think it is also safe to say that the interrelationship between juvenile justice and juvenile criminality and adult criminality varies from one area to another. This is another reason why it would be more appropriate to handle it on a State and local basis.

As far as prisons are concerned, we don't have the money. No question about it—the task force recommended \$2 billion, but we didn't have \$2 billion. However, there are some initiatives that are better than \$2 billion. The best example is what happened in New York. We have provided an inventory of all of the abandoned military bases to the States that can be used for prison purposes.

In the case of New York, we transferred the Watertown facility to the State of New York.

Mr. FRANK. That is surplus property that is available?

Attorney General SMITH. Let me finish.

That means, that if we had the \$2 billion and we gave the share of the \$2 billion to the State of New York for purposes of building a prison they could not build that prison for 5 years. What we have done with Watertown is to give them a facility right now that they can use immediately.

Mr. FRANK. What if States don't have surplus Federal property?

Attorney General SMITH. We have an inventory of about 500 properties that are around the country. Some of course, are not capable of being utilized for this purpose. Nevertheless, they have been inventoried and States have expressed a great deal of interest in them.

You have to consider all the aspects of this problem. The fact is that in this time of budgetary restraint we don't have \$2 billion. We look around to find other solutions to that problem.

Mr. FRANK. The reason I say I lump these things together is in your statement where you say specifically with regard to juvenile justice it is not simply budgetary constraint, you are saying this is a fundamental responsibility of the State and local governments, with the Federal Government excluded.

Attorney General SMITH. It is both of those.

Mr. FRANK. Both State and local?

Attorney General SMITH. No. Both budgetary and the fact it should be done at the State and local level.

Mr. FRANK. Crime control is not really a Federal responsibility.

Attorney General SMITH. Crime control?

Mr. FRANK. Crime prevention and control. You are saying crime prevention and control are not primarily Federal responsibility.

Attorney General SMITH. If you are talking about violent crime, which is what the task force dealt with, it is essentially a matter of State and local responsibility. Obviously, there are areas where the Federal Government has responsibility, particularly in the criminal area.

We are functioning in those areas and, in addition, we are trying to provide a certain amount of leadership insofar as the State and local law enforcement effort is concerned. In that respect, we have adopted one of the more important recommendations of the crime task force, namely, to establish local law enforcement coordinating committees. These committees are in each of the 94 districts and provide a pooling of resources so that the Federal Government can

better utilize its resources in those areas to aid the State and local government to meet the major problem of crime.

Mr. FRANK. Everybody is for coordination. I don't think it is a substitute for help of a more fundamental changeable sort.

Attorney General SMITH. In that respect you disagree with most law enforcement officials.

Mr. FRANK. Not the ones I spoke to who regretted loss of fire-arms. It does seem to me the pattern here with regard to juvenile justice, with regard to the Justice Assistance Act and others, bears out your statement "that crime prevention and control are fundamental responsibilities of State and local governments".

It does not seem to me they can expect much help in the administration's program by the Federal Government.

The CHAIRMAN. I must advise the gentleman that his time has expired.

Mr. FRANK. Thank you, Mr. Chairman.

Mr. CHAIRMAN. Mr. Kastenmeier.

Mr. KASTENMEIER. Thank you, Mr. Chairman. The hour is late and I will be very brief. As a matter of fact, I want to comment on matters raised by a couple of my colleagues.

I agree with the gentleman from Michigan who questions the wisdom of the Department placing a lower priority on criminal matters including corruption and dangerous drug prosecution, and internal security than is placed on the Office of Special Investigations. I think that is really unfortunate.

More importantly I want to ask a question raised by the gentleman from Massachusetts, Mr. Frank. We had solicited the views of the Department with respect to these court jurisdiction bills. I want to make sure I understand what you said which is to say that bills referred to the Department for comment have not been responded to, because such responses would be in the nature of advisory opinions unless the bills are acted on somehow. This can't be true.

The Department, when opinions are solicited for purposes of public hearings on issues of this sort, frequently either offers testimony or an opinion.

Why would you say that a solicited comment from the Justice Department would be an advisory opinion and not worthy of giving to a Judiciary Committee?

Attorney General SMITH. I did not say that. The question was why haven't you stated the position?

In effect my response is, the position on what? There are 26, 27, 30 bills on that subject in Congress. It is true early last year, as I remember, that question came up before the subcommittee. At that time, we were not prepared to render an opinion for the very simple reason that we had not fully studied this question at that point.

As you know, reputable Constitutional scholars have different opinions on this question. Not only do you have legal questions but, you also have public policy questions. At such time as those public policy questions are addressed, we certainly will participate.

Mr. KASTENMEIER. I would hope so. The previous administration had an opinion and of course it presumably stands unless refuted

by your Department as the opinion of the Justice Department I suppose.

Isn't this a matter for which you solicited views from your own Office of Legal Counsel? Do you not have views from your Office of Legal Counsel on these propositions?

Attorney General SMITH. The whole question is being studied. As I say, there are various views on the subject, such as the constitutionality. There are views with respect to the wisdom. There are also views with respect to desirability assuming it is constitutional.

Mr. KASTENMEIER. Of course no one denies that the issue is complex, but that is not an excuse it seems to me for the Department not having a coherent view.

Attorney General SMITH. The question is, a coherent view on what? As I say, there are 27 to 30 bills. Some are similar, some are not similar. They treat the subject matter quite differently. Then of course, we have the current authorization bill passed by the Senate which is a quite different approach from some of the other bills.

The question is do we have a single viable proposal to evaluate? We just haven't been presented with one. I think you will find that we are not exactly bashful in expressing viewpoints when it is appropriate to do so.

Mr. KASTENMEIER. As a policy matter then the Department has not taken a position on these? We are talking about something quite apart from constitutional evaluations or legal issues.

As a policy matter the Department has not taken a position on a group of bills, all of which have as a central question, a key aspect, that is the withdrawal of jurisdiction from the U.S. Supreme Court and/or the other Federal courts?

Attorney General SMITH. We should not lump those two issues because they raise quite different questions. You also raise a different question when you have a bill which affects, for example, a remedy; not remedy per se but a remedy that a court can render in a given situation. There are a great many variables and yet people say why haven't you taken a position on it.

The question is, a position on what? When we are called upon to take a position on something that is definable, we have not been bashful in taking a position.

Historically I think the leading bill on the question has been the Helms amendment. It is fair to say in the last Congress it was the Helms amendment relating to school prayer. That was a definitive bill. Perhaps we can hope by soliciting the Department's views on a particular bill of that sort you will be forthcoming, the Department will be, in terms of its views.

Attorney General SMITH. We certainly want to be as helpful as we can.

Mr. KASTENMEIER. We would assume that any opinion you would have would separately analyze constitutional and policy implications, the legal questions, all in one comprehensive view. The Department has done that many times. It is not necessarily to say we are not able to because the questions arising are several.

I would hope that the Department could give us its views on a very important question.

Thank you, Mr. Chairman.

The CHAIRMAN. I want to thank you very much, Mr. Attorney General.

It is a few minutes past 12 o'clock. I do want to commend you for your patience. You have always been very accommodating. I appreciate that.

I want to apologize for the committee. You came here at 9:30 as you were invited to do and we were not ready to start until 10 o'clock. Nonetheless, I do want to thank you.

I do hope that some of the comments we have made will serve you, too, in going back to your Department because I know there has been an effort to try to cooperate.

I want to point out that Mr. Schmults and Mr. McConnell, who exchanged some comments with me—we met in order to be able to understand and cooperate—have been very helpful. But these matters of no response are of deep concern to us and we felt we had to bring them to your attention.

Thank you very much, Mr. Attorney General.

Attorney General SMITH. I thank you, Mr. Chairman. I appreciate it.

[Whereupon, at 12:05 p.m., the subcommittee was adjourned.]

APPENDIX



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

FEB 26 1982

Honorable Peter W. Rodino
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to questions raised by you and other Members of the Committee at the February 23, 1982, hearing on the Authorization of the Department of Justice Appropriation for Fiscal Year 1983.

At the hearing you requested a status report on your request for this Department's views on H.R. 3269, the proposed Malt Beverage Interbrand Competition Act. A draft response is at the Office of Management and Budget (OMB) awaiting Administration clearance. We will make every effort to expedite the OMB clearance process. You also noted that we had not yet provided Department views on H.R. 3268, the proposed Organized Crime Act. We support the intent of H.R. 3268 and have been considering similar problem areas and the need for corrective legislation. We regret the excessive delay in providing our specific views on H.R. 3268 and will endeavor to provide a detailed response as soon as possible.

You indicated that the Committee had not received a response to an inquiry concerning the Department's decision to close the Antitrust Division Regional Office. That response was apparently enroute to you at the time of the hearing and is enclosed as attachment A. In addition, you said that the Committee had requested material on the closed IBM case and was refused access. I understand that there have been extensive and fruitful discussions between the Antitrust Division and members of your staff concerning this matter. Moreover, I am advised that Assistant Attorney General William Baxter will soon forward a formal response to the Committee's request. Finally, you noted that documents requested in relation to ABSCAM had not been provided by the Department. We are anxious to cooperate with the Committee to the fullest extent possible, consistent with this Department's obligations as a party to the cases in question. Our precise position on the extent and timing of permissible disclosure of the requested ABSCAM documents is set forth in the attached copy of a February 16, 1982, letter to Congressman Edwards. See Attachment B.

Congressman Edwards asked the Attorney General to describe the role this Department is playing in the review of the Draft Executive Order on Classification. The Department of Justice role in reviewing the draft Executive Order on Classification, and all other proposed Executive Orders is established by section 2(h) of Executive Order 11030. Cf. 28 C.F.R. §0.33b(h). It is customary when proposed orders are especially lengthy or complex for the Department to review several drafts of an Order being developed and that practice has been followed on the proposed Order on Classification.

Congressman Edwards also inquired as to why the Judiciary Committee was not consulted and asked for comments as were the Government Operations and Intelligence Committee. Primary responsibility for development of the proposed Order rests with the Information Security Oversight Office of the General Services Administration. The Department of Justice has not undertaken to distribute the proposed Order either within the Executive Branch or to any Congressional Committee.

During the hearing Congressman Edwards characterized the portion of the Administration's budget message dealing with attorneys fees as indicative of a desire to discourage private attorneys from bringing certain cases against the Federal Government by setting a "artificially low hourly cap on fees...". Mr. Edwards also felt that the budget message implied that "public-interest attorneys would never be eligible for attorney fee awards from the United States." I believe that Congressman Edwards has misapprehended that portion of the budget message.

A proposal to cap attorneys' fees is now under consideration by the Administration. The purpose of this proposal is to provide a ceiling for the award of attorneys' fees against the government. Budgetary constraints make it imperative that we assure that the various costs now being assessed against the government be reasonable. We have not yet determined what the dollar amount of the fee cap should be. Public-interest attorneys would not be precluded from receiving attorney fees. The purpose of this proposal is to assure that fees are reasonable.

During his colloquy with Congressman Edwards the Attorney General offered to provide materials concerning the nature and extent of this Administration's civil rights enforcement activities, in order to refute the contention that we are abandoning civil rights law enforcement. The enclosed statement by Assistant Attorney General Reynolds clearly illustrates this Administration's serious commitment to civil rights law enforcement. See Attachment C.

Congressman Denialsno requested the Attorney General to provide the amount of money the Department paid for retention of private counsel in lawsuits against federal officials in their individual capacities. The combined total for Fiscal Years 1977 and 1978 was \$1.8 million; in Fiscal Year 1979, the amount was \$400,000; in Fiscal Year 1980, it was \$250,000; and in Fiscal Year 1981, it was \$648,000. It should be noted that many of the cases for which these sums were obligated remain open and active and we are continuing to pay bills against these obligations.

Congressman Danielson also asked whether the Justice Department's case management computer system would permit a report as to the nature, extent, location and status of presently pending cases involving constitutional torts. Suits against present and former federal officials fall within the cognizance of virtually all of the litigating divisions of the Department. We estimate that there are approximately 2,200 cases presently pending. The Civil Division is responsible for the bulk of this litigation (1,500 cases). The Criminal Division oversees approximately 600 cases and the remaining cases are spread throughout the Divisions. Moreover, the actual responsibility for defending these cases at the trial court level rests with the various United States Attorneys throughout the country. Each of these organizational components has a form of computerized case tracking system but, at present, they are not integrated. Furthermore, cases are generally reported under a category listing cases against individuals; there is no general breakdown between constitutional tort suits and other litigation seeking personal damages from individuals. Present computer systems do not include information as to the nature of claims or the extent of the governmental activities giving rise to the suit. Rather, they contain only that information which would permit the tracking of the case (e.g., name of the plaintiff and the defendant, docket number, jurisdiction, etc.).

For your information I am attaching very brief summaries of four recent cases which resulted in adverse judgments against federal officials. See Attachment D.

In addition, Congressman Denialsno inquired as to whether the United States has asserted any claims against a drug manufacturer pursuant to its enforcement rights set forth in the Swine Flu Program of 1976. We have not asserted any such claim, although indemnity is being requested of a program participant in one instance following a settlement predicated upon negligent administration of the vaccine. To date, there have been no final

decisions in which the United States has been held liable because of the negligence of a drug manufacturer.

Congressman Butler asked about a letter he and several other Republican Congressmen delivered to the Attorney General on February 4, 1981, concerning a civil rights proposal. A copy of the Attorney General's response of February 5, 1981, is enclosed as Attachment E.

Representative Butler also requested the statutory authority for the Department's decision to close the Chicago office of the United States Trustee. Quite simply, there was not enough money after the last round of budget cuts to keep open and effectively functioning all two offices mandated by statute. The Chicago office was chosen because both the U.S. Trustee and the First Assistant resigned at the same time which left the office without appropriate administrative officers. Quilten Shea, Director of the Executive Office for U.S. Trustees, is at present the Acting Trustee for the Chicago office.

The legal authority for closing down the U.S. Trustee office in Chicago was the Anti-Deficiency Act. There simply was not enough money provided under the last continuing resolution to keep open and effectively operating the ten U.S. Trustee offices mandated by statute for the pilot program. An administrative decision was made by the Department of Justice to close down one office so that the other nine pilot offices could be kept operational and therefore influencing the administration of the bankruptcy laws rather than all ten offices becoming little more than paper mills.

Congressman Hughes expressed the view that the President had failed to comply with 21 U.S.C. §1112, which requires the designation of an official to coordinate drug policy from the White House, and 21 U.S.C. §1117, requiring a report from the President to be Congress prior to March 1 of each year concerning drug abuse policy coordination. Because these requirements are under the immediate jurisdiction of the Executive Office of the President, we will refer the matter to the White House for a response.

Representative Hughes also asked if the Administration would support enactment of H.R. 4481, the Justice Assistance Act, in light of the adoption of House floor amendments which were based on recommendations from this Department. Although we did provide suggested technical amendments to H.R. 4481 in our letter of November

24, 1981, we also indicated that this Department was nevertheless opposed to H.R. 4481 on the merits. H.R. 4481 proposes to continue, in a somewhat different form, a program similar to that of the Law Enforcement Assistance Administration, which the Administration, with the concurrence of the Congress, is phasing out. To re-enact such legislation at this time would be contrary to the Administration's efforts to return to State and local governments responsibility for programs which can be best administered at those levels.

Congressman Mazzoli asked about some unanswered letters he sent to the Department. The letters of October 23 and December 4, 1981, to the then Acting Commissioner of the Immigration and Naturalization Service (INS), Doris Maissner, went directly to the INS and thus were not entered into the Department's central tracking system for congressional correspondence. The INS has been gathering information from its regional offices in order to prepare responses to these letters. We will follow-up to insure that Congressman Mazzoli receives answers to the letters as soon as possible. The December 10, 1981, letter to the Attorney General has not been formally responded to, although I understand that my office and Congressman Mazzoli's staff have had extensive discussions in recent weeks on the matters raised in that letter. In any case, a proposed formal response is under final review and should be forwarded to Congressman Mazzoli in the near future. The February 2, 1982 letter to the Attorney General has been answered. See Attachment F.

Congressman Kiodness alluded in general terms to unanswered letters from the Committee on Government Operations to the Department. In checking with cognizant staff for that Committee, we were unable to determine what correspondence the Congressman had in mind. If more specific information can be provided, we will be glad to follow-up.

Congressman Kindness also asked how many professional, administrative, or clerical support positions are to be transferred from the Department of Energy to the Department of Justice. Although the materials provided to us by the Department of Energy thus far are not identified by types of position, the grade structure provided would indicate approximately 229 professional and 104 administrative or clerical support positions are to be transferred.

Congressman Sawyer asked why deportable Cubans were not taken to the U.S. Naval Base at Guantanamo Bay and placed in Cuban territory. There are no facilities for detaining Cuban nationals at the Guantanamo Bay Naval Base. Moreover, under the terms of the lease in perpetuity with Cuba, the base is to be used for military purposes

only. Any unilateral change in the terms may invite similar action by the government of Cuba.

I trust this is responsive to the Committee's initial inquiries.

Sincerely,

(Signed) Robert A. McConnell

ROBERT A. McCONNELL
Assistant Attorney General

Attachments

NINETEENTH-CENTURY CONGRESS

PETER W. RODINO, JR. (D-N.J.), CHAIRMAN

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Congress of the United States
 Committee on the Judiciary

House of Representatives
 Washington, D.C. 20515

Telephone: 202-225-3951

March 9, 1982

GENERAL COUNSEL:

ALAN A. PUGH

CLERK: GREGORY

DANIEL A. CLINE

ASSISTANT GENERAL

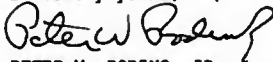
FRANKLIN G. FOLE

The Honorable William French Smith
 Attorney General of the United States
 Department of Justice
 Washington, D. C. 20530

Dear Mr. Attorney General:

Pursuant to your testimony before the Committee on Tuesday, February 23, 1982, wherein you expressed willingness to answer written questions, I would appreciate your written responses to the attached questions.

Sincerely yours, 1



PETER W. RODINO, JR.
 Chairman

PWR:dfm
 attachments

Written Questions for the Attorney General
Re: Department of Justice Authorization FY 1983

1. I and other members of the House Judiciary Committee are heartened by the personal concern and dismay you expressed at the record of your department in responding to legislative requests by members of this Committee. However, despite your personal commitment to improving the responsiveness of the Department of Justice, the budget recommendation for the Civil Division indicates that the Department will respond to 35% of Congressional legislative inquiries in 1982 and plans to respond to but 25% of such inquiries in 1983.

In view of your personal commitment, do you believe some revision of the Department's expectations in this area are in order? What steps do you plan to take to ensure that the Department is more responsive to Congress in the future?

2. The Department has requested \$415,000 over the 1982 budget request to employ private counsel to defend Federal personnel who are involved in tort suits where the Department of Justice is precluded from directly representing such personnel because of a conflict of interests. You stated that this \$415,000 expenditure represents an increase over prior years.

Has the Department not requested and received similar amounts for the program in recent years through supplemental budget requests? Would you supply the Committee with figures indicating the annual costs for the program since 1975?

3. You testified that the automated case tracking system for the Civil Division would be capable of classifying the types of "constitutional tort" suits pending against Federal officials. You also stated that there are more than 1,500 of such suits pending.

Precisely how many "constitutional tort" suits are pending against Federal officials currently? How many of these require private counsel? When may we expect a breakdown of the types of suits Federal employees are facing?

4. In response to a question from Rep. Edwards, you indicated that the Department's Office of Legal Policy and Office of Intelligence Policy were involved in the drafting of a proposed new executive order on classification. A major reason given for the new order has been problems arising from Freedom of Information litigation.

It is the Civil Division that defends the government in FOIA suits.

- a. Is the Civil Division involved in the drafting process? If not, why not?
- b. What specific problems have arisen in litigation that have caused the Administration to rethink E.O. 12065? Please cite specific cases wherever possible.
- c. How do the changes in the draft reflect those problems?
- d. Where in the Executive Branch did the impetus for the draft order come? The Justice Department? The White House? The Intelligence community?

4. (continued)

e. As the justification for the changes is litigation-oriented and the Department appears to be playing a significant role in the process, why has not the House Judiciary Committee been asked to comment or to become involved?

5. Please provide the Committee with more detail on the proposals for amendments to the espionage laws.

Again, where has the impetus come from. What are the problems leading to a conclusion that some reexamination or change is necessary? What changes are being explored?

6. You indicated in your testimony that you would provide the Committee with "data and statistics which support [your] statement" that the Department is "enforcing the civil rights statutes to the fullest."

We would appreciate it if you would provide the Committee with that information.

7. Does the Administration have any plans to transfer responsibility for administering the Public Safety Officers Benefits Act from the Department of Justice to another agency? Have there been any discussions about such a proposal within the Department of Justice or between the Department of Justice and the White House or other agencies?

(questions continue next page)

- I. The amendment to the President's budget contained an amount of \$35 million for the construction of a permanent detention facility. The Conference Committee rescinded this amount plus an additional amount of \$10 million.

The Attorney General indicated in his testimony that he hoped the Congress would reinstate the \$35 million in considering the FY 1982 budget.

Should the Congress insist on this deletion, is it the intention of the Department of Justice to revise its FY 1983 budget to include this amount in the budget request?

How would the denial of the construction of such a site by the Appropriations Committee effect the operation of INS?

What other considerations have been given to utilizing an existing Department of Defense facility to serve as a permanent detention center?

What objections have been encountered in utilizing a Defense facility for this purpose?

Should funds be granted, where would this installation be located? How long would it take to become operational?

What interim measures are contemplated to fill the Service's needs while construction is proceeding?

What INS operations were affected by the \$10 million decrease ordered by the Conference Committee? Should these funds be reinstated in the FY 1982 budget? If not, will the FY 1983 budget be revised to include these funds?

There is some question whether the OMB will approve a supplemental \$12 million to off-set the 1981 pay raise, if this is not approved INS will be required to absorb it in its budget. What effect will this have on INS operations?

- II. From all appearances there is an acute shortage of INS detention facilities. It is understood that many of the persons detained are awaiting decisions on asylum claims.

There are allegedly over 100,000 asylum claims pending with INS. In 1981, INS processed only 4,600 such claims asserting that this adjudication action has a low priority vis-a-vis other adjudication activities.

This situation indicates a lack of internal coordination within the Service wherein the action of one activity adversely affects that of another.

Please explain this adjudication decision in view of the vital need for additional detention capabilities.

- III. Statistics furnished with the FY 1983 budget on the Deportation Program indicate that unexecuted final orders of deportation pending at the end of 1980 were 22,816; 1981, 23,521; 1982 estimate, 30,400; and 1983 estimate, 33,200.

What is meant by an unexecuted deportation order? Why are these deportation orders unexecuted?

Why is there an increase (actual and estimated) each year in this activity of the deportation program?

- IV. Realizing that the Department of State normally takes the initiative in recommending certain concessions from the Attorney General for aliens who are in the United States and unable to return because of internal turmoil:

Are there any plans now to confer some concessions as extended voluntary departure, authorization to work, etc. to Poles presently in the U.S.? To Salvadorans apprehended? To Nicaraguans? To Iranians belonging to minority groups?

- V. It has been noted that 57 positions and \$58 million have been added to the INS budget due to the transfer of certain care and processing activities for Cubans and Haitians from H.H.S. to the Department of Justice.

Explain exactly what this transfer of funds and positions means in furtherance of the INS mission. What rationale was used to transfer this activity to INS rather than some other section of the Department of Justice?

What is the Department's policy with regard to getting INS involved in long term detention activities as opposed to its traditional role in short term detention?

At which point will the Bureau of Prisons take responsibility for INS detainees?

- VI. This Committee has always felt that an INS presence abroad was necessary to process properly refugees for admission to the United States under the Refugee Act of 1980. It is noted that the budget calls for the elimination of 10 positions from this activity.

In view of the continued high level of our refugee admissions program, 140,000 in FY 1982, and our decision to expand the areas from which these refugees are to come, what justification can be given for cutting 10 positions from this program, especially now that a case-by-case review for all refugees has been instituted as a result of last year's controversy between State and Justice over the definition of a refugee?

Along this same line, should the definition of a refugee as contained in the Refugee Act of 1980 remain as is or should some thought be given to refining it to make it more specific?

Responses to Written Questions for the Attorney General
Re: Department of Justice Authorization for FY 1983

1. Q. I and other members of the House Judiciary Committee are heartened by the personal concern and dismay you expressed at the record of your department in responding to legislative requests by members of this Committee. However, despite your personal commitment to improving the responsiveness of the Department of Justice, the budget recommendation for the Civil Division indicates that the Department will respond to 35% of Congressional legislative inquiries in 1982 and plans to respond to but 25% of such inquiries in 1983.

In view of your personal commitment, do you believe some revision of the Department's expectations in this area are in order? What steps do you plan to take to assure that the Department is more responsive to Congress in the future?

- A. The Civil Division's budget submission indicates a 35% and 25% timely response rate for comments on proposed legislation for FY 1982 and FY 1983, respectively. This timeliness factor does not imply in any way that the Division will not respond to requests for comments on pending legislation as quickly as resources permit, but does suggest that it is not always possible to respond within the time frames we have established for ourselves. Within the Department and Division we make every effort to respond to such requests within the time frame requested by Congress.

The Division's FY 1983 budget does not seek an increase in resources for this Congressional affairs function. These percentage rates therefore reflect our best estimate of the number of timely responses we will be able to generate within present resource constraints. All requests will, of course, be responded to. The same staff that is responsible for ensuring timely responses to proposed legislation is also responsible for timely responses to Congressional inquiries which we believe deserve priority response initiative. While the number of Congressional inquiries has steadily increased since 1980 we have maintained an 80% timely response rate, which in turn has slightly decreased our capacity to maintain or increase the timely response rate to proposed legislation.

As the FY 1983 budget submission indicates, the Division is initiating a number of efforts to increase the overall responsiveness to Congressional inquiries and proposed legislation. These initiatives include development of a selective retrieval program whereby information concerning prior and pending legislation may be immediately obtained from

automated word processing equipment resulting in a substantial savings in attorney research hours; establishment of a response program for non-case related Congressional inquiries which partially alleviates attorney Congressional inquiry workload; development of a Congressional response tracking system which decreases the number of outstanding responses; and enhanced capability to provide timely and relevant responses to inquiries from Congress, the public and the White House.

2. Q. The Department has requested \$415,000 over the 1982 budget request to employ private counsel to defend Federal personnel who are involved in tort suits where the Department of Justice is precluded from directly representing such personnel because of a conflict of interests. You stated that this \$415,000 expenditure represents an increase over prior years.

Has the Department not requested and received similar amounts for the program in recent years through supplemental budget requests? Would you supply the Committee with figures indicating the annual costs for the program since 1975?

- A. Historically, funds for private counsel fees have been provided through supplemental appropriations or absorbed as part of the Department's general legal activities appropriation. This procedure was based on an expectation that Congress would enact amendments to the Federal Tort Claims Act which would make expenditure of these funds unnecessary. The Department is continuing its efforts to obtain an amendment to this act; however, until the amendment is enacted additional funding will be required to carry out this aspect of the Division's litigating activity.

The Department has paid for retention of private counsel in lawsuits against federal officials in their individual capacities. The combined total obligations for Fiscal Years 1977 and 1978 was \$1.8 million from a supplemental; in Fiscal Year 1979, the amount was \$400,000 obligated from our regular appropriation; in Fiscal Year 1980, it was \$250,000 from regular appropriations; and in Fiscal Year 1981, it was \$500,000 from a supplemental and \$148,000 from regular appropriations. It should be noted that many of the cases for which these sums were obligated remain open and active and we are continuing to pay bills against these obligations. In FY 1982, we anticipate obligations of approximately \$400,000. We are exploring ways of meeting this need from our regular appropriation.

3. Q. You testified that the automated case tracking system for the Civil Division would be capable of classifying the types

of "constitutional tort" suits pending against Federal officials. You also stated that there are more than 1,500 of such suits pending.

Precisely how many "constitutional tort" suits are pending against Federal officials currently? How many of these require private counsel? When may we expect a breakdown of the types of suits Federal employees are facing?

- A. There are 18 pending cases in which private counsel have been retained at government expense since 1977. There are also 4 cases in which requests for private counsel are awaiting decision or implementation. A total of 41 law firms have been retained. This reflects the fact that most cases require retention of a separate law firm for each group of compatible defendants whose interests conflict with those of another defendant or group of defendants.

Determination of the precise number of Constitutional tort suits would only be possible through a manual search of the files of every United States Attorney's Office. Our estimate of 2200 pending cases is based upon input from a number of case tracking programs within the Department. No one system has the capability to record all such cases and the independent systems are not integrated. Moreover, our estimate does not include those cases being handled by agencies other than the Department of Justice. For example, the Securities and Exchange Commission is responsible for the defense of litigation brought against its employees.

With respect to the nature of suits being brought against federal employees, there are three general types: suits arising from law enforcement activities; from governmental activities or programs; and from personnel management. The cases span the entire range of the daily activities and duties of federal public servants and it is the rare case which does not, at least in part, seek to invoke the Constitution. Again, the Departmental case tracking systems have only rudimentary information which is not capable of producing a report which breaks down the cases by specific type of conduct or allegation.

4. Q. In response to a question from Rep. Edwards, you indicated that the Department's Office of Legal Policy and Office of Intelligence Policy were involved in the drafting of a proposed new executive order on classification. A major reason given for the new order has been problems arising from Freedom of Information litigation.

It is the Civil Division that defends the government in FOIA suits.

- a. Is the Civil Division involved in the drafting process? If not, why not?
 - b. What specific problems have arisen in litigation that have caused the Administration to rethink E.O. 12065? Please cite specific cases wherever possible.
 - c. How do the changes in the draft reflect those problems?
 - d. Where in the Executive Branch did the impetus for the draft order come? The Justice Department? The White House? The Intelligence community?
 - e. As the justification for the changes is litigation-oriented and the Department appears to be playing a significant role in the process, why has not the House Judiciary Committee been asked to comment or to become involved?
- A. The Office of Intelligence Policy is responsible for representing the Department in the review of Executive Order 12065 and for coordinating with other DOJ components to ensure that all views are taken into account. The Civil Division has been consulted and has commented throughout this process.

The Executive Branch process has been coordinated by the Information Security Oversight Office of the General Services Administration and by the White House Staff and has not been solely "litigation oriented". The White House Staff decided to provide a draft of the proposed new order to certain Congressional committees for their review and comment. While the Department has participated in the drafting process, we have never been identified as the lead agency and did not participate in the selection of the Committees that were provided an opportunity to comment on the proposed order. However, by letter to Congressman Glenn L. English on March 4, 1982 the Department of Justice expressed a willingness to engage in informal discussions of the order with members of the Government Operations Committee Subcommittee on Government Information and Individual Rights which had been provided a copy by the White House. We are willing to engage in similar discussions with the Judiciary Committee but continue to believe it would not be appropriate to provide public comments on the draft order because it involves a pending Presidential decision. If the President decides to issue a new executive order, the Civil Division would be pleased to provide an analysis of the impact of the new order upon Freedom of Information Act litigation.

5. Q. Please provide the Committee with more detail on the proposals for amendments to the espionage laws.

Again, where has the impetus come from. What are the problems leading to a conclusion that some reexamination or change is necessary? What changes are being explored?

- A. As I testified before the Committee, this matter is under very preliminary review, and no conclusions have been reached as yet. The Department, in coordination with the Intelligence Community, is evaluating the need for possible revisions, but no issues have been isolated. Criminal statutes are being reviewed to determine whether remedial legislation is necessary. Beyond that, it would be premature to comment.

6. Q. You indicated in your testimony that you would provide the Committee with "data and statistics which support [your] statement" that the Department is "enforcing the civil rights statutes to the fullest."

We would appreciate it if you would provide the Committee with that information.

- A. This Department is prosecuting nearly 240 civil rights actions at this time. Following is a summary for each of our enforcement sections of actions that have been either begun or actively pursued since this Administration took office:

Appellate: We have filed approximately 100 briefs in the courts of appeals and the Supreme Court; provided legal counsel and research on some twenty-five civil rights matters and handled congressional and executive agency requests for comment on 160 legislative matters.

Criminal: Forty-three new cases charging criminal violations of the civil rights laws have been filed. Eleven previously filed cases have been brought to trial. Thirty-seven matters are awaiting presentation to or outcome of a grand jury.

Coordination and Review: Approximately 35 actions have been undertaken as part of the Department's duty under Executive Order 12250 to coordinate the enforcement by federal agencies of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973 and other similar nondiscrimination statutes. These range from the development of a coordination regulation for implementing the Executive Order to review of more than 20 proposed civil rights enforcement regulations presented by executive agencies.

Federal Enforcement: Six new cases have been filed against public employers alleging employment discrimination on grounds of race or sex. Six cases we inherited have gone to trial and in three others we have obtained consent decrees.

Eight possible suits are in negotiation. Nine complaints that have been received are under investigation and are likely to result in lawsuits.

General Litigation: This section has three primary areas of responsibility -- education, housing and credit. In the area of education, we have negotiated consent decrees or obtained court-ordered relief in nine school cases and are currently working on six more. We have participated in litigation in six ongoing cases and initiated investigations into discrimination in educational program offerings in three others. In addition, we have decided to proceed in all four of the cases filed at the very end of the last Administration. In the housing area there have been active proceedings in 11 cases, including a new suit filed on February 4, 1981. With respect to credit discrimination, three cases have been actively pursued since January 1981. We have under review for possible prosecution ten education, three housing and four credit discrimination matters.

Special Litigation: This section handles the litigation directed at the failure of state and local institutions (such as prisons, nursing homes and mental institutions) to treat residents in a manner that does not violate their basic rights. Thirteen cases have been the subject of significant court actions, including the Department's first intervention since passage in 1980 of the Civil Rights of Institutionalized Persons Act. In addition, we have investigated the conditions of confinement at two state prison systems and fourteen publicly operated facilities. Following notice of our investigation one state decided to close an institution.

Voting: We have participated in litigative activities in twenty-seven cases (seven involving amicus participation), including two new actions to enforce the election law pre-clearance requirement of Section 5 of the Voting Rights Act of 1965. Under Section 5 we received between January 1, 1981 and February 16, 1982, 40 statewide redistricting plans (13 state Senate, 16 state House and 11 U.S. congressional district plans). As of February 16, four Senate plans had been precleared, four objected to and five remained under review. Five House plans had been precleared, five objected to and six were under review. Three congressional plans were precleared, three were objected to and five were under review.

Between January 1, 1981 and February 16, 1982 we received approximately 8400 election law changes for preclearance. Objections had been made by February 16 to two annexations, six redistrictings (other than statewide), four registration or reregistration procedures, four election methods and six miscellaneous changes.

Special Counsel for Sex Discrimination Litigation: Four possible lawsuits are under review. Eleven investigations are pending, involving a wide range of sex discrimination issues.

This summary of our civil rights enforcement activities is necessarily brief. However, I understand that Assistant Attorney General for Civil Rights Wm. Bradford Reynolds will testify on April 5 before the House Judiciary Subcommittee on Civil and Constitutional Rights and will provide at that time additional details about these activities.

7. Q. Does the Administration have any plans to transfer responsibility for administering the Public Safety Officers Benefits Act from the Department of Justice to another agency? Have there been any discussions about such a proposal within the Department of Justice or between the Department of Justice and the White House or other agencies?
- A. The office responsible for administering the Public Safety Officers Benefits Act was recently transferred from the Law Enforcement Assistance Administration to the Office of Justice Assistance, Research, and Statistics. This shift was made necessary by the phaseout of LEAA. No other transfer is currently being contemplated pending the development of Administration policy regarding the extension of Justice System Improvement Act, the legislation which established OJARS and which is due to expire at the end of FY 1983.

- I. The amendment to the President's budget contained an amount of \$35 million for the construction of a permanent detention facility. The Conference Committee rescinded this amount plus an additional amount of \$10 million.

The Attorney General indicated in his testimony that he hoped the Congress would reinstate the \$35 million in considering the FY 1982 budget.

- Q. Should the Congress insist on this deletion, is it the intention of the Department of Justice to revise its FY 1983 budget to include this amount in the budget request?

- A. Yes. Funds for a permanent detention facility will be requested in the 1983 I&NS budget if they are not made available in 1982. I&NS anticipates a continuing influx of aliens; a permanent detention facility with a capacity to house at least 2,000 aliens is necessary for the successful implementation of the Administration's immigration and refugee policy. In fact, the critical nature of this request, due to its potential impact on controlling illegal immigration, argues for its inclusion in the next supplemental as an extraordinary item.

- Q. How would the denial of the construction of such a site by the Appropriations Committee effect the operation of INS?

- A. Currently there are six Service Processing Centers within I&NS which are operating at full capacity. Overcrowding has been experienced periodically necessitating the use of space available in Bureau of Prisons (BOP) facilities. Additional detention space is required, especially in view of the increased flow of illegal aliens which we have experienced and are expecting to see in the future.

Lack of a permanent facility also adversely affects I&NS' apprehension activities. To control the Nation's borders, more emphasis must be placed on control of illegal border traffic and area control. This cannot be accomplished with I&NS' current detention capabilities. Furthermore, early funding for an immigration detention center will provide the possibility of early relief to current overcrowding in Bureau of Prisons facilities, as aliens detained by BOP are removed to the new center.

- Q. What other considerations have been given to utilizing an existing Department of Defense facility to serve as a permanent detention center?

- A. The Department of Defense has suggested some sites for the possible location of a detention facility; but has informed us that none of the sites are available on a permanent basis. In addition, inspection of these locations demonstrated that none were suitable for a permanent facility. There are three sets of factors to consider in selecting the site for a permanent detention facility--site adequacy, operational compatibility and public/political acceptance. Assessing the adequacy of the site includes consideration of building size, drainage capabilities and proximity to highways. Determining the operational capability of the site involves assessing the proximity of the site to courts, schools, hospitals and other essential facilities. Final selection of a site will be based on its ability to meet these criteria as well as its acceptance in the community.
- Q. What objections have been encountered in utilizing a Defense facility for this purpose?
- A. The Department and I&NS have extensively explored the availability and applicability of existing bases with the Department of Defense (DoD). In fact, the Navy facility at Fort Allen, Puerto Rico, is presently being used as a Service Processing Center and the Krome site in Miami, Florida is an ex-Nike base that has been modified to satisfy detention needs. All other proposed sites are either not suitable or not available from DoD's point of view.
- Q. Should funds be granted, where would this installation be located? How long would it take to become operational?
- A. The detention facility should be centrally located to accommodate I&NS' apprehension and removal activities not only in the southwestern United States, but also in the high density areas in the Northern and Eastern Regions. The facility should become operational 12-18 months after the funds are appropriated.
- Q. What interim measures are contemplated to fill the Service's needs while construction is proceeding?
- A. I&NS has been using Bureau of Prisons (BOP) space to house Haitians and other aliens. While construction of a permanent I&NS facility is taking place, the Service will continue to use BOP facilities to house aliens to the extent possible. If additional detention capacity is necessary, I&NS will review all options available at that time including the possibility of contracting for space from state and local authorities as an interim solution to housing aliens until a permanent facility is completed.

Q. What INS operations were affected by the \$10 million decrease ordered by the Conference Committee? Should these funds be reinstated in the FY 1982 budget? If not, will the FY 1983 budget be revised to include these funds?

A. The following is I&NS' breakdown of the \$10 million cut imposed by the Conference Committee on the 1982 budget amendment: *

Program	Item	<u>Personnel Amount</u>	<u>FTE</u>	<u>Non- Personnel</u>	<u>Total</u>
Inspections.....	Vehicle replacement	...	...	\$ 189	
	Profiles replacement	...	...	350	\$ 539
Border Patrol - Immediate.....	Personnel	\$2,040	70	...	
	Travel	...	...	200	2,240
Border Patrol - Other.....	Personnel	260	5	...	260
Anti-Smuggling..	Surveillance equipment	...	...	125	125
Investigations..	Personnel	400	12	...	400
Detention and Deportation...	Fort Allen Krome	...	...	2,830	
	Alien travel	...	...	1,789	4,619
Trial Litiga- tion.....	Personnel	78	2	...	78
Construction and Engineering...	Space Improvement	...	...	350	350
Data Systems....	Master Index Upgrade	...	...	300	300
Communications Systems.....	Radio Systems (Loredo, St. Paul and Honolulu)	...	...	450	
	Portable Sensor Equip- ment	...	...	150	
	Trial and Diagnostic Equipment	...	...	150	
	Maintenance	...	...	50	
	Portable Radios	...	...	125	925
Records.....	Personnel	104	7	...	104
Executive Direc- tion.....	Personnel	60	2	...	60
	TOTAL	\$2,942	98	\$7,058	\$10,000

* Figures are expressed in thousands of dollars.

These funds are being requested in I&NS' supplemental request to the 1982 budget. This request was forwarded to the Department of Justice in January 1982 and is pending approval from the Office of Management and Budget (OMB).

- Q. There is some question whether the OMB will approve a supplemental \$12 million to off-set the 1981 pay raise, if this is not approved INS will be required to absorb it in its budget. What effect will this have on INS operations?
- A. The 1982 figures in the I&NS budget do not include funds for the pay raise in accordance with instructions from the OMB. The I&NS is waiting instruction from OMB relative to how much, if any, of the pay raise will be absorbed in 1982. Without these instructions, a proper assessment of its impact on I&NS operations is not possible.

- II. From all appearances there is an acute shortage of INS detention facilities. It is understood that many of the persons detained are awaiting decisions on asylum claims.

There are allegedly over 100,000 asylum claims pending with INS. In 1981, INS processed only 4,600 such claims asserting that this adjudication action has a low priority vis-a-vis other adjudication activities.

This situation indicates a lack of internal coordination within the Service wherein the action of one activity adversely affects that of another.

- Q. Please explain this adjudication decision in view of the vital need for additional detention capabilities.
- A. All asylum applicants who are detained by I&NS are under either exclusion or deportation proceedings.

I&NS operating instructions provide for the expeditious processing of asylum applications submitted by detained aliens. The request for an advisory opinion from the Department of State is conspicuously noted "detained alien, expeditious reply requested." The Department of State gives priority to these requests.

The lengthy delay in the processing of the approximately 2,100 detained Haitian asylum applicants has been from Judicial challenges to I&NS asylum procedures.

The adjudication of the asylum application is a complex and lengthy procedure. To shift additional resources to the adjudication of asylum applications would increase

adjudication backlogs and reduce service to other applicants for benefits under immigration law.

It should also be noted that of the 97,459 pending asylum claims at the end of FY 1981 approximately 30,000 were Cubans whose claims are in abeyance because of the pending legislation affecting Cuban/Haitian entrants.

The asylum procedure needs to be streamlined. Our present system is simply overwhelmed by sheer volume of asylum claims. The Administration has proposed legislation to do this.

III.

Statistics furnished with the FY 1983 budget on the Deportation Program indicate that unexecuted final orders of deportation pending at the end of 1980 were 22,816; 1981, 23,521; 1982 estimate, 30,400; and 1983 estimate, 33,200.

- Q. What is meant by an unexecuted deportation order? Why are these deportation orders unexecuted?
- A. At the end of Fiscal Year 1981, there were 23,521 unexecuted final orders of deportation. There will always be a number of cases in this category because of the time lag in verifying departure. The category contains cases where the Immigration Judge or Board of Immigration Appeals has granted an order with an alternate order of voluntary departure and verification of the alien's departure has not been received. Unexecuted orders also include those cases where the Immigration Judge has granted suspension of deportation and the case has not been presented to Congress for final action.
- Q. Why is there an increase (actual and estimated) each year in this activity of the deportation program?
- A. The number of unexecuted final orders of deportation has increased each year because of the increase in the number of aliens requesting deportation hearings. In addition, the service projects an increase in the number of apprehended illegal aliens in FY 1983. This directly impacts on the number of unexecuted final orders.

IV.

Realizing that the Department of State normally takes the initiative in recommending certain concessions from the Attorney General for aliens who are in the United States and unable to return because of internal turmoil:

- Q. Are there any plans now to confer some concessions as extended voluntary departure, authorization to work, etc. to Poles presently in the U.S.? To Salvadorans apprehended? To Nicaraguans? To Iranians belonging to minority groups?

- A. There are no plans at present to confer special concessions for apprehended Salvadorans and Nicaraguans, although these situations are under constant review. Presently, applications for asylum by Nicaraguans and Salvadorans are considered on a case by case basis. A blanket extension of voluntary departure poses significant problems in this area, which must be weighed.

Potentially, an extension of this sort would increase the incentive for further illegal migration and be viewed as a precedent which could be put forth as a basis for creating further extensions for increasing numbers of persons fleeing civil strife in this hemisphere.

This situation is not comparable to previous grants of blanket voluntary departure because here the U.S. is the country of first asylum and great numbers of persons are involved. It is difficult to resume enforcement of departure laws after such an extension takes place.

Polish nationals in departure status are not required to return to their native country until March 31. The situation in Poland is under review, and may affect this cut-off date.

The Department of State has reconsidered its recommendation on claims of asylum by Iranian minorities (Christians and Jews). Those Iranians whose claims have been recently denied on the grounds of advance recommendations by State will have their claims reconsidered on motion of INS and the claims will be sent back to State for reconsideration.

- V. It has been noted that 57 positions and \$58 million have been added to the INS budget due to the transfer of certain care and processing activities for Cubans and Haitians from H.H.S. to the Department of Justice.

- Q. Explain exactly what this transfer of funds and positions means in furtherance of the INS mission. What rationale was used to transfer this activity to INS rather than some other section of the Department of Justice?
- A. By Executive Order 12341, the responsibility of administering Section 501(c) of the Refugee Education Assistance Act of 1980 (P.L. 94-422) has been placed within the Department of Justice. This activity provides for the processing, care, maintenance, security, transportation and initial reception and placement in the United States of Cuban and Haitian entrants. Included in the \$58.735 million are funds for detention, medical services and care for the entrants, both within the centers and in the community immediately after they are resettled.

The rationale for transferring this activity to the DOJ reflects the fact that all Cubans and Haitians are technically under the custody of the Attorney General. Because those in custody are held under the immigrations laws, responsibility was given to I&NS.

- Q. What is the Department's policy with regard to getting INS involved in long term detention activities as opposed to its traditional role in short term detention?
- A. We are currently assessing all of the detention options related to the issue of alien long/short-term detention requirements. Based on our review, the Department will formulate long-term alien detention policy.
- Q. At which point will the Bureau of Prisons take responsibility for INS detainees?
- A. The Department is still reviewing alternatives regarding detention options. Pending determination of a formal Departmental policy regarding long and short-term detention responsibilities, a decision will be made as to whether BOP will take responsibility for I&NS detainees, and if so, at which point.

VI.

This Committee has always felt that an INS presence abroad was necessary to process properly refugees for admission to the United States under the Refugee Act of 1980. It is noted that the budget calls for the elimination of 10 positions from this activity.

- Q. In view of the continued high level of our refugee admissions program, 141,000 in FY 1982, and our decision to expand the areas from which these refugees are to come, what justification can be given for cutting 10 positions from this program, especially now that a case-by-case review for all refugees has been instituted as a result of last year's controversy between State and Justice over the definition of a refugee?
- A. The 10 positions for the Overseas program were initially cut from the 1982 base in the original House Allowance. These positions were not reinstated in the Weicker/Hollings amendment or conference action.
- Q. Along this same line, should the definition of a refugee as contained in the Refugee Act of 1980 remain as is or should some thought be given to refining it to make it more specific?

- A. The definition of refugee, as contained in the Refugee Act of 1980, is a result of refinement of the definition over the many years of dealing with refugees and attendant problems.

This definition fully meets the United States' responsibility in the international resettlement of refugees and is consistent with the criteria established by the Convention Relating to the Status of Refugees and a Protocol Relating to the Status of Stateless Persons.

- VII. Each year on the Floor, representatives from the Southwest border ask whether the INS budget contains any funds for the construction of new fencing along the border or the acquisition of land for this purpose.

- Q. What funds are in the FY 1983 budget related to fencing on the southwest border?

- A. At this time, I&NS has no funds for new or replacement fencing projects for FY 1982 and FY 1983. Its maintenance plan for the Southern Region, however, contains a minimum of \$50,000 annually for the next two years for fence maintenance.

- VIII. This Committee, in its authorization bill for the past few years, has consistently pressed for an effective automated non-immigrant arrival and departure control system. It is noted that the Service contracted Price Waterhouse to make a study of the situation and recommend measures for resolving the problem. This study is now completed and certain decisions have been made regarding the structure of such a system.

- Q. What decisions have been made regarding the proposed system, how is the system going to work, and what plans are being made to effectuate the system?

- A. The Price Waterhouse Study identified three options for developing a non-immigrant document system. The three range from the most basic and least expensive to the most complex and costly. The Service has not selected a specific Price-Waterhouse option for system development because that approach would set design constraints on prospective vendors, which is contrary to the spirit of OMB Circular A-109.

The I&NS will most likely implement a modified "Option B" of the Price-Waterhouse study. This alternative contains similar procedures to the current system, is capable of capturing immigrant data at the port of entry and provides an automated index containing name, date of birth, visa/consulate number, and location, available immediately via terminal at the Central Office and in field units.

Because it is part of a larger group of systems, its capabilities will include acquisition, storage and retrieval of information on arrivals, departures, extensions and changes within non-immigrant status.

At present the I&NS is planning to seek industry proposals for development and operation of the new system. The solicitation was sent to Commerce Business Daily on March 9, 1982, for announcement; the contract is scheduled to be awarded in May, 1982; the system will be developed by the end of FY 1982 and should be fully operational by January 1983. Early in FY 1983 the system will be operated at test locations to determine its workability and to resolve any problems that might arise in its full-scale implementation.

- Q. What money is there in this budget to implement the system?
- A. In the FY 1982 budget amendment \$750,000 was provided to the Service to implement the system. Because these funds will be sufficient to implement the system, there are no funds requested in FY 1983 for implementation. We are, however, requesting \$1,752,000 in FY 1983 to operate and maintain the system.
- 1X. Q. It is noted that as of February 6, 1982, there were 1,312 vacancies in INS out of an authorized force of 10,604. The most notable vacancies are 348 in the Border Patrol, 129 in Investigations, 179 in Deportation, 120 in Records.

Explain the reason for over a 12% vacancy rate in the Service.

What concrete hiring plans are there to fill I&NS vacancies?

- A. Initially faced with a large reduction in the authorized force and a reduction in funds to fill existing vacancies, the I&NS implemented a hiring freeze in many decision units. This resulted in an increase in the I&NS vacancy rate in early 1982.

An increase of 1,073 positions and \$65 million were added to the I&NS in its FY 1982 budget amendment. The true availability of those positions, however, was somewhat uncertain because the government was operating under a continuing resolution. When the Service was initially granted these positions they were somewhat hesitant to rush out and fill them, pending the passage of an actual budget.

In view of these additional positions, the vacancy rate of 12 percent that is cited is quite biased. If an adjustment is made for the number of positions added by the amendment in the programs specifically identified in the question, the vacancy rate drops to 3.7 percent; adjusting the vacancy rate Servicewide for the amendment drops the overall vacancy rate to 2.5 percent. These figures are both more accurate and more reasonable than the 12 percent rate previously cited.

The Acting Deputy Commissioner lifted the total hiring freeze on February 16, 1982, effecting the Inspections, Adjudications, Investigations, and Status Verification decision units. As a result, the Central Office and the regions may now fill vacancies in all decision units in both the "Permanent" (PMFA) and "Other" categories subject only to the availability of funds and FTE/work-years. The I&NS expects hiring/placement activity to commence shortly within these restrictions. The I&NS intends to fully staff its vacant positions to the 1982 level by the end of the fiscal year.



Department of Justice

REMARKS

OF

WILLIAM BRADFORD REYNOLDS
ASSISTANT ATTORNEY GENERAL
CIVIL RIGHTS DIVISION

BEFORE

THE DELAWARE BAR ASSOCIATION

1:00 P.M.
MONDAY, FEBRUARY 22, 1982
HOTEL DUPONT
WILMINGTON, DELAWARE

CIVIL RIGHTS ENFORCEMENT IN THE REAGAN ADMINISTRATION:
THE FIRST YEAR IN REVIEW

I am pleased and honored to have been invited here today to speak to such an august and respected body of legal talent. As one who grew up in this community, I have always had nothing but the highest admiration for both the bench and bar of this State. For that reason, and also perhaps because I know so many of you personally, the opportunity to share with you some critically important observations regarding my area of responsibility in this Administration, is especially welcome.

As are most of you, I am, of course, a lawyer, and therefore, not surprisingly, I find myself all-too-often afflicted by what may be for members of our profession, a traditional inclination to divorce any issue from Supreme Court decisions dealing with that issue. Given that predilection, I am particularly fortunate in my present position, for the principal battlefield in the cause for racial equality has been the United States Supreme Court.

Let me reflect with you briefly upon the evolution in the Supreme Court of the fundamental principle of racial equality. I do this not only as a result of the lawyer's natural tendency to build his case on legal precedents, but also as a sobering reminder that those who ignore history are frequently condemned to repeat it.

Over 85 years ago, Justice John Harlan, the Elder, said this in dissent in Plessey v. Ferguson, 163 U.S. 537, 559 (1896) (Harlan, J., dissenting): "Our constitution is color-blind, and neither knows nor tolerates classes among citizens. . . . The law regards men as men, and takes no account of his surroundings or of his color." The rest of the Justices disagreed with Justice Harlan's view of the Fourteenth Amendment, concluding that "in the nature of things it could not have been intended to abolish distinctions based on color" id. at 544. Thus, the Supreme Court ruled that Mr. Plessey, who was one-eighth black, could be excluded by law from the railroad car reserved exclusively for whites. In so ruling, the Court wove into the fabric of our Nation's history the shameful separate-but-equal doctrine.

Years later, in 1944, Justice Murphy wrote in Korematsu v. United States, 323 U.S. 214, 242 (1944): "Racial discrimination in any form and in any degree has no justifiable part whatever in our democratic way of life. It is . . . utterly revolting among a free people who have embraced the principles set forth in the Constitution of the United States." Those words, remarkably, were also written in dissent, the majority ruling that the Government is constitutionally authorized to exclude United States citizens of Japanese ancestry from certain areas in California.

The principle so forcefully articulated by Justices Harlan and Murphy, however, ultimately prevailed, and in Brown v. Board of Education, 347 U.S. 483 (1954), the Supreme Court finally overruled Plessey v. Ferguson, holding that separate educational facilities are inherently unequal. Although it was overruling more than half a century of Supreme Court jurisprudence, the court acknowledged with eloquent simplicity the primacy of the constitutional right at issue: "At stake," said a unanimous court, "is the personal interest of the plaintiffs in admission to public schools . . . on a [racially] nondiscriminatory basis." Brown v. Board of Education, 349 U.S. 294, 300 (1954).

The Brown decision spurred a judicial and legislative quest to condemn racial discrimination, both public and private, in virtually every aspect of American life. The courts have, since Brown, consistently denounced distinctions based on race as being by their very nature, in Chief Justice Stone's words, "odious to a free people whose institutions are founded upon the doctrine of equality." Loving v. Virginia, 388 U.S. 1, 11 (1966), quoting Hirabayashi v. United States, 320 U.S. 81, 100 (1943).

Congress has likewise made clear its abhorrence of racial discrimination, enacting initially the Civil Rights Acts of 1957, aimed at assuring equal voting rights -- and, incidentally, establishing within the Department of Justice an Assistant Attorney General for Civil Rights. Following that

enactment, there came a steady flow of national civil rights legislation: The Civil Rights Act of 1960 (voting); the Omnibus Civil Rights Act of 1964 (public accommodation, school desegregation, federal programs, employment, etc.); the Voting Rights Act of 1965; and the Civil Rights Act of 1968 (fair housing) -- to name but a few of the milestones in this area. And this activity by Congress has continued through the current session where extension of the Voting Rights Act is now being debated.

Each of these important pieces of legislation assigned enforcement responsibilities to the Attorney General -- who in turn delegated them to the Civil Rights Division. Thus, over the years, the Division has initiated hundreds of enforcement actions and has participated in some of the thousands of class-actions brought by private citizens. It traditionally has been -- and most assuredly will continue to be -- on the cutting edge of the government's involvement in the effort to eliminate discrimination through federal court litigation.

The question being asked, however, is exactly what that commitment means. We are hearing with increasing vocal intensity that this Administration is insensitive to civil rights, has abandoned active enforcement of the civil rights laws, and seeks to dismantle or undo the progress of past decades. The response of "Not So" -- which comes at every occasion from the President, the Attorney General, and me -- is dismissed by our detractors, and, remarkably, by many in the media, as little more than empty rhetoric.

Rather than leave the debate in the highly charged atmosphere of emotional accusations and denials, let me share with you today in dispassionate terms what this Administration is seeking to accomplish in the civil rights area, and how we are going about doing it.

I start with a given: since 1954 our Nation has progressed in this vital area both attitudinally and statistically. Our national consciousness has been raised, and the profound injustice of discrimination on the basis of immutable and irrelevant personal characteristics, such as color, is broadly recognized and condemned. As a consequence, racial and other stereotyping is declining, and most people now accept the legal and moral imperative to treat individuals equally, regardless of race, color sex or national origin. Obviously, and sadly, there are exceptions, and enforcement action is still required. But it is most important, in my view, to appreciate that such circumstances are the exception and no longer the rule.

That we are continuing in this Administration to deal with the exceptions -- and to deal with them as vigorously and uncompromisingly as prior administrations -- is amply demonstrated by our enforcement record. Let me just tick off a few facts that never seems to get reported by those who day-in and day-out cover this most topical subject:

1. Since January 29, 1981, the Civil Rights Division has filed 43 new cases charging criminal violations of the civil rights laws and has conducted trials in 11 other cases that were previously under indictment. The cases range from wanton racial murders, to mistreatment of prisoners and arrestees, to involuntary servitude. This level of activity exceeds the "track record" of prior administrations.

2. In addition, in the past year we have filed 6 new employment cases against public employers alleging discrimination on grounds of race or sex. During the same period, 6 cases we inherited have been litigated, and in 3 others, we have obtained consent decrees. I have also authorized 8 new suits of employment discrimination which are presently being negotiated, and there are 9 other complaints we have received that are under investigation and are likely to result in lawsuits.

3. Our enforcement activity also includes the Voting Rights Act, where the level of activity in the Division over the past year far exceeds previous years. Since the change of administrations, we have reviewed more than 8400 electoral changes to determine whether they are in compliance with the Act. While most of these have been approved, there are some that have not. Falling into this latter category are the state legislative and/or congressional redistricting plans

submitted to the Attorney General for approval by the States of Texas, North Carolina, Georgia, Virginia and South Carolina. An objection was also entered to the New York City councilmanic redistricting plan. In addition, we have participated in litigation in 27 court cases seeking to assure minority voting rights.

4. In the area of school desegregation, our activity has been no less impressive. When the Administration changed on January 20, 1981, the Division had over 400 school districts under remedial court orders and a large docket of additional cases, some of which had been filed after the election but before the new Administration took office. In the past year, we have negotiated consent decrees or obtained court-ordered relief in 9 school cases, and we are currently working on 6 more. We have participated in litigation in 6 ongoing cases, and have initiated investigations into discrimination in educational-program-offerings in 3 others. In addition, we have decided to proceed in all 4 of the cases filed at the very end of the last Administration. We have also settled the statewide higher education case in Louisiana, and participated in the bilingual education case in Texas. Our largest case involves the City of Chicago which will, I believe, prove to be the first urban voluntary desegregation remedy -- and will, I predict, result in a greater degree of desegregation of the Chicago school system than could have been accomplished under a mandatory busing plan.

5. One other area of activity is noteworthy. In 1980, Congress passed the Civil Rights of Institutionalized Persons Act, under which the Attorney General was given authority to bring lawsuits against state and local institutions (such as prisons, nursing homes and mental institutions) which failed to treat residents in a constitutional manner. In the past year, we have initiated 16 investigations of allegedly egregious conditions in such institutions, and just last week one state decided to close a clearly sub-par institution following our initial investigation.

This does not exhaust the list of initiatives we have undertaken to enforce the civil rights laws. But it does underscore -- on the basis of clear, irrefutable facts -- that the commitment of this Administration to strong and vigorous enforcement of the many federal statutes under my responsibility is not -- as our detractors insist -- empty rhetoric. We remain dedicated to continuing the battle being waged against discrimination based on race, and our actions demonstrate the depth and sincerity of that commitment.

Why, then, do we find ourselves embroiled in controversy over the policies that have been adopted by this Administration in the civil rights area? The answer, I believe, centers on a fundamental difference of opinion over certain of the approaches that have been taken to remedying past discrimination.

There is, I submit, general unanimity among most Americans with regard to the "end" that we all are striving to achieve. After a shameful history of ignoring the injustice of racial discrimination -- a history marked by such Supreme Court decisions as Plessey v. Ferguson and Korematsu v. United States -- a consensus developed after Brown v. Board of Education, both in Congress and in the country as a whole, that racial discrimination is wrong and should not be tolerated in any form.

My concern -- and that of this Administration -- is that certain remedies that have been developed in the past decade are threatening to dilute this essential consensus. Most Americans, I think, now support the idea that each individual should be judged on his or her merits, regardless of race. However, race-conscious remedies which require preferential treatment for minorities, or which intrude unnecessarily on the legitimate functions of local governments, are not widely supported. Indeed, in many instances such remedies have a divisive effect which tends to undermine popular support for the basic commitment to racial equality.

Consequently, this Administration has dared to reexamine some of the relief that has come to be "accepted practice" in the civil rights community. While we share fully the desired "end", we are questioning -- and, I submit, for good reason -- some of the "means" that have been employed in the past to get there. It is this inquiry that has brought forth a

round of criticisms and led in some instances to disparaging, and wholly unjustified, remarks about our lack of commitment to civil rights enforcement.

Let me undertake to state the case for the defense. It is not all remedial techniques in the civil rights area that we seek to improve upon; most are both sensible and effective, and we have no desire to tamper with them. Our focus has been, instead, primarily on two forms of relief that we, and many Americans, find objectionable: 1) mandatory busing, and 2) racial quotas. In both cases, we are talking about relief that was adopted almost a decade ago without any empirical evidence to suggest a likelihood of success.

With respect to mandatory busing, it first appeared as a permissible remedy in school cases in the Supreme Court's 1971 decision in Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1 (1971). The Court there held, largely in reliance on untried and untested predictions of social scientists, that desegregation decrees may order race-conscious student assignment schemes that employ mandatory busing, alteration of zones, and other methods to obtain racial balance in schools. Judged ten years later against the test of time, it is clear that the experiment with mandatory busing as a remedy for de jure, or state-enforced, segregation has not fared well. Few issues have generated as much public tumult and anguish as court-ordered busing, and there is compelling evidence that mandatory transportation of students has failed to accomplish the remedial goal that Brown and Swann anticipated, namely,

an educational environment that would provide an equal opportunity for every school child, irrespective of race, to realize his or her achievement potential in accordance with industry and talent. As Attorney General William French Smith observed in his address last year to the American Law Institute:

"The results of studies aimed at determining the benefits of busing to educational achievement are at best mixed. Some studies have found negative effects on achievement. Other studies indicate that busing does not have positive effects on achievement and that other considerations are more likely to produce significant positive influences.

In addition, in many communities where courts have implemented busing plans, resegregation has occurred. In some instances upwardly mobile whites and blacks have merely chosen to leave the urban environment. In other instances, a concern for the quality of the schools their children attend has caused parents to move beyond the reach of busing orders. Other parents have chosen to enroll their children in private schools that they consider better able to provide

a quality education. The desertion of our cities' school system has sometimes eliminated any chance of achieving racial balance even if intra-city busing were ordered."

The flight from urban public schools has eroded the tax base of many cities, which has in turn contributed to the growing inability of many school systems to provide high-quality education to their students--whether black or white. Similarly, the loss of parental support and involvement has robbed many public school systems of a critical component of successful educational programs. When one adds to these realities the growing empirical evidence that racially balanced public schools have failed to improve the educational achievement of the students, the case for mandatory busing collapses.

Our examination of racial quotas as a remedy for employment discrimination has been no more encouraging. During the 1960's, minorities made significant educational and economic strides in the labor force under the statutory and decisional law outlawing discrimination and granting "make whole" relief to individual victims who could show actual injury at the hands of a discriminatory employer. 1/ That

1/ See T. Sowell, Affirmative Action Reconsidered (1975); T. Sowell, Knowledge and Decision 259-59, 355-56 (1980); R. Freeman, Black Economic Progress Since 1964, The Public Interest 52 (1978); Statement of Morris Abrams before Hetch Subcommittee on Constitutional Rights, at 9 (May 4, 1981).

such a remedial approach was fully contemplated by Congress when it passed Title VII of the Civil Rights Act of 1964 is clear from both the language and legislative history of the Act. Thus, the late Senator Hubert Humphrey, a leading advocate of social equity and racial equality, and the foremost proponent of the 1964 Civil Rights Act, decried the idea that Title VII would countenance racial quotas, remarking: "It is claimed that the bill would require racial quotas for all hiring, when in fact it provides that race should not be used for making personnel decisions." 110 Cong. Rec. 6553 (1964). In like manner, remarks by other proponents of the legislation confirmed the fact that Title VII was intended to establish a principle of "colorblindness in employment." Id. at 6564. And, in McDonald v. Santa Fe Trail Transportation Co., 422 U.S. 273 (1976), the Supreme Court interpreted Title VII to prohibit racial discrimination against white employees upon the same standards as would be applicable were they nonwhites.

Nonetheless, impatience with the progress in the 1960's of minorities' efforts to achieve statistical parity with whites in the employment field, gave rise in the 1970's to the use of racial formulas, such as hiring goals and fixed quotas, designed to effectuate a certain balance among the races in the work place; and the concept of race-conscious "affirmative action" was born. This new concept of "affirmative action" discarded the notion that a preference is permissible only when necessary to place an individual victim of proven racial discrimination in a position that he or she would

have attained but for the discrimination. Rather, proponents of this view sought the granting of preferences not simply to individuals who had in fact been injured, but to an entire group of individuals, based only on their race. It mattered not that those who benefitted had never been wronged by the employer, or that the preferential treatment afforded to them was at the expense of other employees who were themselves innocent of any discrimination or other wrongdoing.

When we undertook to examine more carefully the progress made by minorities under the new regime of racial quotas, the results were disappointing. While the better educated and more affluent blacks made modest gains, the vast majority of working class blacks continued to be largely unassisted. In fact, the movement of large numbers of minorities into the workforce in the 1960's under the traditional concept of "affirmative action" embodied in Title VII of the 1964 Act was in most job categories more impressive than was the case under the quota systems of the 1970's. Attorney General Smith summarized the likely explanation in the following terms in his ALI address:

"While well intended, quotas invariably have the practical effect of placing inflexible restraints on the opportunities afforded one race in an effort to remedy past discrimination against another. They stigmatize the beneficiaries.

Worst of all, under a quota system, today's minimum may become tomorrow's maximum."

In formulating policies in the areas of public school desegregation and equal employment opportunity, this Administration has refused to close its eyes to these experiences of the past decade. "The life of the law," Oliver Wendell Holmes once said "has not been logic, it has been experience." The Common Law. Blind allegiance to experiments that have not withstood the test of experience obviously makes little sense.

It is for this reason that we have abandoned mandatory busing and racial quotas as remedial devices in the area of civil rights. In their stead, we are pursuing relief that holds out more promise in the long run for providing enhanced education to minority students in a desegregated environment, and for bringing larger numbers of minorities into the workforce.

In this connection, contrary to some of the more critical comments, we are not against desegregation. Any student desiring to attend a public school with students of the opposite race should be afforded the opportunity to do so, and we will continue to ferret out and remove any artificial barriers imposed by states or municipalities designed to defeat that result. But, at the same time, we will not deprive students of the significant benefits of attending school in their own neighborhoods by insisting on a mandatory, race-conscious transportation remedy that has proven ineffective and holds out little promise for an enhanced educational experience.

Similarly, let me state in response to our detractors that this Administration is not against "affirmative action" in its traditional sense. We fully agree that employers should take affirmative steps -- going beyond mere passive nondiscrimination -- to ensure that all barriers to employment and advancement of minorities are permanently removed, so that applicants and employees of all races are able to attain the level of achievement warranted by their industry and talent. To this end, we will insist as an element of relief for discriminatory employment practices that the employer embark on an affirmative recruitment program to bring increased numbers of qualified minorities into the pool of applicants eligible for hire on nondiscriminatory basis. But we will not tolerate preferential selections that favor less qualified employees over those who are better qualified solely on the basis of a person's membership in a particular racial group. Were we to act otherwise, we would be open to the charge that we have sought to remedy discrimination with discrimination. This, the Department of Justice will not do.

In so stating, let me re-emphasize in closing that this Administration is indeed working toward the same ultimate "end" that is shared by all Americans, both black and white alike -- i.e., the objective of racial equality that

shaped the thinking of Justices Rehn and Murphy and that served as the centerpiece of the unanimous decision in Brown. It is our firm belief that adherence to the color-blind ideal of equal opportunity for all -- the ideal that guided the framers of the Constitution and the drafters of civil rights legislation in this country -- is essential to to preserving the national consensus condemning discrimination in our schools and in the workplace, and holds the greatest promise of realizing the proclamation in the Declaration of Independence of equality for all Americans.

That is the teaching of the first year of civil rights enforcement in the Reagan Administration -- as measured by both our pronouncements and our actions -- and it will continue to be the course followed in the years ahead.

Thank you.

RECENT ADVSERSE BIVENS JUDGMENTS
AGAINST INDIVIDUALS

Hobson v. Jerry Wilson, et al., D. D.C. Civil Action No. 76-1326.

A total of \$711,000 was awarded seven former antiwar activists against fourteen present or retired officers of the FBI or Washington, D.C. police department. The suit charged violation of constitutional rights during undercover surveillance activities in the 1960s and 70s. The verdict was complex, awarding different amounts for and against different parties.

Epps v. United States, et al., D. Md. CA No. J-78-2373.

A judgment of \$200,000 was awarded against a Field Branch Chief of the IRS for allegedly vandalizing the property of the plaintiff while her business was in the possession of the IRS.

Nees v. Bishop, et al., D. Col. 524 F.Supp. 1310(1981).

One thousand dollars was awarded to a plaintiff who alleged that the losing defendant had deprived him of his right to counsel by allegedly telling state custodial authorities not to let him see a legal aid attorney.

Clymer, Jr. v. Grzegorek, et al., E.D. Va., CA No. 80-1009-12.

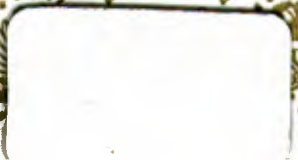
Damages of \$1.00 were awarded against a former federal correctional institution warden in favor of a prisoner who claimed overcrowding and understaffing led to violence and an assault upon him.

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